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Transcript of proceedings Volume II, Pages 190-402

Wayne C. Lenhart
Court Reporter

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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF WASHINGTON

COLVILLE CONFEDERATED TRIBES,)
Plaintiff,)
v.)
BOYD WALTON, JR., et ux., et al.,)
STATE OF WASHINGTON, Interv. Deft.,)
Defendants)

No. 3421

Combined with

UNITED STATES OF AMERICA,)
Plaintiff,)
v.)
WILLIAM BOYD WALTON, et al.,)
Defendants.)

No. 3831

TRANSCRIPT OF PROCEEDINGS

VOLUME II

Pages 190-402, inc.

February 8, 1978

Spokane Calendar

February 7, 1978

Neill, J.

FILED IN THE
U. S. DISTRICT COURT
Eastern District of Washington
FEB 21 1978
J. R. FALLOQUIST, Clerk
Deputy

214

1 Morning Session

2 February 8, 1978 9:00 A.M.

3 THE COURT: Good morning.

4 COUNSEL IN UNISON: Good morning.

5 THE COURT: I guess we were in the midst
6 of the State's cross-examination of Mr. Cline.
7 You may proceed.

8
9 CROSS-EXAMINATION CONTINUED

10 BY MISS ECKERT:

11 Q Mr. Cline, you spoke yesterday about leakage from
12 Omak Creek to the No Name Creek system. Can you
13 tell us very briefly, physically what it is that
14 happens in this so-called leakage process.

15 A The water in Omak Creek is flowing down along the
16 valley and, like from Site 1 down through about Site
17 6, the creek is above the groundwater reservoir.
18 Therefore, water can percolate vertically downward
19 through the bottom of the creek bed and through the
20 materials, down to the groundwater reservoir beneath
21 the stream.

22 Q In your studies of Omak Creek in the No Name Creek
23 system, did you determine, is there any point between
24 Sites 1 and 6 in which the rate of leakage was greatest
25 into the groundwater?

1 A Well, more water leaks out of the stream between
2 Sites 3 and 6 than between Sites 1 and 3.

3 Q Is there any physical reason that you are able to
4 determine for that difference in leakage?

5 A No, not really.

6 Q Okay. Now, too, would it be a fair statement to
7 say that if you were able to increase the leakage
8 rates, you would increase the recharge of the No
9 Name Creek groundwater aquifer?

10 A Yes.

11 Q Okay, and do you have any knowledge of any method
12 that could be used to increase the leakage?

13 MR. VEEDER: I object.

14 MR. SWEENEY: I object, also. I think
15 this is changing the situation that existed.
16 This is something beyond the study period that Mr.
17 Cline made. I mean, there is all sorts of things
18 that could be done as far as management of waters
19 in that basin is concerned, but he has only
20 testified about the availability of water that was
21 there during the study period, not as to other
22 plans of management, something like that.

23 THE COURT: What do you feel is the
24 relevancy to your question, ma'am?

25 MISS ECKERT: I was basically, Your Honor,

1 following up on a question that was asked by Mr.
2 Price in regard to induced flows that Mr. Cline
3 answered yes, that dry wells could be sunk to induce
4 greater flows, and I was asking if there was any
5 other method, basically.

6 THE COURT: Counsel, I overruled Mr. Veeder's
7 objection on this point yesterday. I had some concern
8 about the propriety of that, but what I felt I should
9 do is let this in. I may strike it later, but I have
10 some concern as to whether that is getting outside
11 the scope of the area, but I'm going to let you ask
12 this question. I may strike this later. I want to
13 give some thought to that.

14 MR. VEEDER: I would like to have a motion
15 to strike the response, Your Honor, based upon the
16 objection I earlier interposed. I think it's
17 remarkable that the Department of Justice and I agree
18 on this point.

19 THE COURT: You may proceed, but I have some
20 misgivings about whether this is proper on the record.
21 I may strike this later, but I will let you make the
22 record on it now.

23 Q (By Miss Eckert) Do you recall the question, Mr.
24 Cline?

25 A You asked if there were other things that could be

1 done to increase the leakage out of Omak Creek.

2 Q That's correct.

3 A This is beyond what we studied, and I would just have

4 to speak in, say, general terms of some possibilities,

5 but it may be that the bottom of the creek bed could

6 be made more permeable such as if there is silt beds

7 or something like that a few feet down, breaking the

8 seal by digging up the creek bed, something of this

9 sort might possibly increase the leakage out of the

10 creek.

11 Q Mr. Cline, are you familiar with the term hydraulic

12 connection?

13 A Yes.

14 Q And can you briefly explain what that is. What does

15 it mean when you say that waters are hydraulically

16 connected?

17 A As I think people would be using it in relation to

18 this study, it would be speaking in terms of where

19 the stream and the groundwater reservoir are part

20 of the same system, that is, that the water levels

21 in the groundwater reservoir are about the same as

22 the stream and the stream is being fed from the

23 discharge of groundwater out of the groundwater

24 reservoir, as opposed to where Omak Creek is perched

25 above the groundwater reservoir and they are *separated*.

1 Q Okay. Is it your testimony, then, that Omak Creek
2 and No Name Creek groundwaters are hydraulically
3 connected to some degree?

4 A Omak Creek and No Name Creek --

5 Q Groundwater.

6 A Groundwater.

7 Q That's right.

8 A The groundwater reservoir is continuous up the valley
9 here and this is indicated or shown by the groundwater
10 divide where your groundwater is moving one direction
11 on one side of the divide and the opposite direction
12 on the other side of the divide but it is still part
13 of the same groundwater reservoir. I should term it
14 this way, I guess, that the groundwater system is
15 continuous, but you generally talk in terms of a
16 groundwater basin as you would a surface water basin,
17 so that they are different basins on either side of
18 the divide.

19 Q Okay, but within the southern half of the groundwater
20 divide, do No Name Creek basin and Omak Creek basin,
21 groundwater basins, overlap?

22 MR. VEEDER: I object to the question, Your
23 Honor. I object to the question when she says, "The
24 south half of the groundwater divide." There is not
25 a scintilla of evidence in this in regard to the

1 south half of the groundwater divide. The entire
2 issue is that there is a groundwater divide and on
3 the theory of Mr. Cline. We disagree with that,
4 but it is certainly not the southern half that is a
5 very remote point clear to the top of the watershed,
6 as I perceive it, and the idea that the water runs
7 north from there and south from there in the state
8 of nature, I think is extremely important, but I
9 don't believe that she could mark it as the south
10 half of the divide as she said.

11 THE COURT: Well, I will sustain the
12 objection only because of the south half. There has
13 been nothing to indicate there is such a unit involved
14 in this case.

15 MISS ECKERT: I'm trying to be too precise,
16 I'm afraid.

17 Q Let me ask you the question again, then.

18 Do the waters of the No Name Creek system and
19 the Omak Creek system overlap to some degree?

20 A I don't really understand the question. What is
21 happening out there is that water is leaking out of
22 Omak Creek into the groundwater system and groundwater
23 system that underlies part of the surface water basin
24 of Omak Creek is that the groundwater in the area
25 just north of Omak Creek, in the general vicinity of

1 like, 9P1 and 9N1, the groundwater there is part of
2 the No Name Creek groundwater basin and that water is
3 moving south toward Omak Lake, but I'm not sure if
4 this is answering what you're asking because I didn't
5 really understand that.

6 Q Well, I'm trying to figure out, is No Name -- what
7 we have been calling the No Name Creek System -- is
8 that really, in fact, just a part of the Omak Creek
9 System?

10 A What do you mean by system?

11 Q Well, --

12 MR. VEEDER: I object to this line of
13 questioning. Obviously, the witness hasn't been
14 properly interrogated.

15 THE COURT: I will overrule the objection.

16 Q (By Miss Eckert) Let me move on to something else,
17 then. You have stated in describing how you prepared
18 this report that the general procedures of the U.S.G.S.
19 in preparing such a report is to go through various
20 stages of approval. Was that, in fact, done in this
21 with respect to the report that is now in evidence?

22 A Yes, it was.

23 Q Now, how many water budgets have you prepared in the
24 course of your professional career?

25 A I don't know.

1 Q Do you have any estimate?

2 A Ah --

3 Q Is it numerous? I mean -- is the reason you are
4 having difficulty answering is because you have
5 done it so many times that you can't remember how
6 many times you have done it?

7 A Well, it's not really that. A lot of situations
8 are where you don't have data for part of the system
9 or that was not part of the duties for studying
10 an area. You only study, for instance, the groundwater
11 portion and not the surface water portion. I
12 generally do some work, or try and do some work,
13 like for instance, making a partial water budget or
14 some analysis this way, but as far as --

15 Q Well, let me ask you this: Is it a commonly used
16 technique?

17 A Yes.

18 Q Are there other techniques that one could use to
19 determine the information that you determine, that
20 is, the 1100 acre-feet figure that you have testified
21 to. Is there any other method other than a water
22 budget that could be used to determine a figure?

23 A Well, sometimes you have to use professional judgment
24 or what information or data you have if you don't have
25 enough information to make a water budget. Sometimes

1 you can't develop a water budget.

2 Q Okay. Well, I'm asking, would you ever, for example,
3 on a basin like -- in studying a basin like No Name
4 Creek, would you ever do computer modeling studies?

5 A This is done, yes.

6 Q And is there any reason why it was not done in this
7 particular study?

8 A It was not requested that we do that. It was not
9 made part of the study.

10 Q Would there have been any advantage to using that
11 kind of technique as opposed to the water budget
12 technique that you did use?

13 A Well, really, you are using the water budget if you
14 are doing a computer study. You have to know the
15 quantities of water going in and out of the system
16 in order to make a computer model.

17 Q So, the computer model would basically help you more
18 with the calculations.

19 A Yes. It can do, say, calculations or determinations
20 that you normally wouldn't have the time or wouldn't
21 try and do. You can run, like projections in the
22 future which are difficult otherwise.

23 Q Now, you testified that you had looked at the
24 precipitation records for, I believe it was from the
25 Omak Weather Station, and you had looked at the records

1 from what year, starting what year?

2 A Well, the Figure No. 2 uses the precipitation date
3 starting in 1971 to late 1977.

4 Q But I -- from your earlier testimony, you had looked
5 at precipitation dates, I believe, for earlier years;
6 isn't that true?

7 A No, not really. I used the published climatological
8 data for annual average precipitation which they
9 used the weather, the prior weather data to make
10 like their year average, but I didn't do that myself.

11 Q And just to make sure that I'm clear on this, because
12 this year was a drought year, are your calculations
13 based on a normal year or a drought year? In other
14 words, did you make corrections to allow for the
15 difference between what might be considered a normal
16 year and a drought year in making your calculations
17 of 1100 acre-feet water availability?

18 A The 1100 acre-feet availability is based on a normal
19 year precipitation, not drought conditions.

20 Q Okay. If you were to have, in the future, many years
21 of higher than normal precipitation, could you manage
22 your system at a figure higher than 1100 acre-feet?

23 A I would assume so, yes.

24 Q Are you familiar with the pattern of flows of Omak
25 Creek? By that I mean, do you know when the principal

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flooding season on Omak Creek is?

A Generally, the wintertime, in particular probably spring when you get your snow melt.

Q And what effect, if any, do floods have on the recharge of the No Name Creek acquifer?

A One thing they might do is that it makes the area of the stream larger so there is a larger area for water to infiltrate in. Another thing floods may do is to move materials in the bed bottom, and perhaps scour the bottom and this may change, then, the permeability of the materials beneath the stream.

Q Thank you. You spoke yesterday of your basing of your 1100 acre-foot figure on -- with a "heavy stress of the system," I believe was the term that you used, and could you explain for us what you mean by "heavy stress system."

A That is where the groundwater reservoir is pumped heavily. That is, a large amount of water is withdrawn to the point where the groundwater reservoir is operated at the lower part of the reservoir, so that the water level in the groundwater reservoir are in the lower part of the saturated, what would sort of be a normal or saturated zone, and the cone of depression is quite large so that this increases the amount of water that can come into the system,

1 in contrast to operating the system up near the top
2 of the reservoir which would be a lighter stress on
3 the system.

4 Q Okay. Did you assign any numerical value to heavy
5 stress? Did you figure that that meant X gallons
6 per minute or --

7 A Well, the 1100 acre-feet withdrawal is the stress.

8 Q That -- the 1100 acre-feet withdrawal is the heavy
9 stress or just a stress?

10 A No, that is what you would -- the stress on the system
11 is the amount of water withdrawn from the system.
12 The more you withdraw --

13 Q So then the 1100 acre-foot, then, you are testifying
14 is that is the point which you reach your heavy
15 stress situation?

16 A That is a heavy stress on the system.

17 Q Okay. Just one or two more questions, quickly.

18 If there were additional pumping from the well
19 identified on Exhibit 2 as, I believe it's 16C3,
20 but it may be 16C4 --

21 A If you are referring to the existing irrigation well --

22 Q That is correct, the most northern.

23 A The existing irrigation well is 16C1.

24 Q Okay. Excuse me. Referring to 16C1, did I understand
25 you correctly to say that if you were to -- if the

1 prime portion or the major portion of pumping in the
2 No Name Creek system were to come from that well,
3 16C1, that the boundary of the groundwater divide
4 could move further north than the line as shown on
5 Exhibit 2?

6 A If that well were deepened -- I'm referring to the
7 fact that the well is -- may not be deep enough to
8 do that as presently constructed, but a well at that
9 location, a deeper well at that location, that well
10 or another well at the same location, would have more
11 influence on the groundwater divide than wells farther
12 south, so that the answer would be yes.

13 Q And then, is it -- and am I correct in saying that
14 if the groundwater divide shifts in a northerly
15 direction, that there is then more water to recapture?

16 A Yes.

17 MR. VEEDER: I renew my objection on these,
18 Your Honor, this idea that they change the pump for
19 the purpose of recapturing Omak Creek water that is
20 not normally available, I think transcends the issues
21 in this case. I renew my objection to the whole line
22 of testimony.

23 THE COURT: Overruled.

24 Q (By Miss Eckert) Now, on the shifts of the groundwater
25 divide boundary that can occur because of various

1 pumping patterns, I take it, do you have any
2 estimate of how rapidly those shifts occur? Do
3 they occur over an irrigation season? Does it take
4 two or three years to show a shift?

5 A Well, it depends on a number of factors. I would
6 just mention that in 1977 that the pumping during
7 the irrigation season shifted the groundwater divide
8 farther north during that pumping time.

9 MISS ECKERT: I don't think I have any
10 further questions. Thank you.

11 THE COURT: Redirect, Mr. Sweeney.

12 MR. SWEENEY: I have just a few questions,
13 Your Honor.

14
15 REDIRECT EXAMINATION

16 BY MR. SWEENEY:

17 Q Mr. Cline, the 1100 acre-feet, if that were removed
18 from the No Name Creek aquifer, that would be a
19 period of heavy stress; is that my understanding?

20 A Yes.

21 Q And is such a removal, is the removal of that amount
22 of water presently feasible under the irrigation
23 wells that are presently existing?

24 A I'm not sure how to answer that. Are you asking as
25 the wells exist without any modifications, the existing

1 wells?

2 Q Yes.

3 A No, you could not do that as they presently exist.

4 Q Now, last year in 1977, about how many acre-feet of
5 water was removed from the aquifer?

6 A The total amount of water removed in irrigation season
7 1977 was 994 acre-feet.

8 Q Okay, and what happened to the groundwater divide
9 to the north when that occurred?

10 A The groundwater divide was shifted farther north
11 than where it was at the beginning of the season.

12 Q And that appears on Exhibit No. 2?

13 A The approximate locations of the groundwater divide
14 in early 1977 was this line that goes through 9M1
15 and the approximate location of the groundwater
16 divide at the end of the irrigation season is the
17 line that goes through 8H1.

18 Q Now, I believe yesterday you were asked about the
19 groundwater divide as it might exist in a state of
20 nature, and I believe you stated that there might
21 be about 950 acre-feet available in that situation;
22 is that correct?

23 A Yes.

24 Q Now, --

25 A When you say "natural," I'm not sure what you mean by

1 that.

2 Q Well, when you stated 950 acre-feet, what did you
3 conceive the conditions to be?

4 A I essentially would be talking about prior to 1977.

5 Q Like in 1976?

6 A Yes.

7 Q And in that period was there pumping going on?

8 A Yes.

9 Q And what was the difference in the pumping that
10 happened in 1977 as compared with 1976?

11 A There was considerably more groundwater withdrawn
12 in 1977 than in 1976.

13 Q Now, when you speak then of the 950, you aren't
14 speaking as if there was no activity at all going
15 on in the basin.

16 A We have no information to tell what conditions were
17 before Walton was pumping his irrigation well and
18 before Omak Creek diversion was operated.

19 Q Okay, that is all. Thank you.

20 THE COURT: Mr. Cline, I'm not sure I
21 understand the difference between your testimony
22 as to the availability of 1100 acre-feet of water
23 and your present statement that there was 950 acre-
24 feet of water available without pumping, I guess
25 that is what you were saying.

1 THE WITNESS: Well, the question was that --
2 without, or -- you know, without shifting the
3 groundwater divide, in other words, the more pumping
4 of water, the more stress on the system, the larger
5 the cone becomes, and when the cone reaches to the
6 groundwater divide and the stress continues, then
7 the groundwater divide will move, and this will
8 capture more water to enter the system.

9 THE COURT: Very good.

10 Any further examination of the witness?

11 You may step down, Mr. Cline, thank you.

12 MR. PRICE: Your Honor.

13 THE COURT: Excuse me.

14 MR. PRICE: I just have a couple of
15 questions.

16 THE COURT: You may.

17

18 RECROSS-EXAMINATION

19 BY MR. PRICE:

20 Q Mr. Cline, when you talk about heavy stress, I believe
21 you have indicated that that is a stress that No Name
22 Valley can live with on a continuing basis.

23 A Yes, under conditions of normal rainfall.

24 Q Okay, and as to whether or not it is presently
25 feasible to remove that amount of water with the

1 existing physical pumping plants, irrespective of
2 that, is the aquifer available, is it physically
3 feasible to manage the system so as to remove that
4 1100 acre-feet a year?

5 A That was the -- yes.

6 Q Thank you.

7 MR. VEEDER: That raises one question from
8 me, Your Honor.

9 Excuse me, I thought he was through.

10 Q (By Mr. Price) And as you place stress on an aquifer
11 that, of a natural, in and of itself, causes that
12 aquifer to extend itself to obtain additional waters
13 that might not otherwise be available to it; doesn't
14 it?

15 A For this present system we are talking about, this
16 is true.

17 Q That is all I have, thank you.

18 THE COURT: Mr. Veeder.

19 MR. VEEDER: Just one question.

20

21

RE CROSS-EXAMINATION

22

BY MR. VEEDER:

23

Q If I understood your testimony, Mr. Cline, it is to

24

the effect that the 1100 acre-feet is an average

25

number computed by you, based upon the runoff records

1 as you perceive them to be; isn't that correct,
2 1100 acre-feet is an average; right?

3 A You threw the word runoff in there. I'm not sure --

4 Q All right, all right. The 1100 acre-feet you state
5 could be withdrawn from the aquifer on an average;
6 is that right? Is that what your --

7 A Yes, on a continuing basis, if --

8 Q Now, just a moment --

9 A -- if precipitation was normal.

10 Q Now, just a moment. You said an average. You didn't
11 calculate a firm supply, a continuous supply of
12 water; did you?

13 A I'm saying that would be a continuous supply, if
14 rainfall were adequate.

15 Q What does an average mean to you, Mr. Cline? An
16 average number. Didn't you take into consideration
17 a series, all of the years and average them out;
18 is that what you did?

19 A For predicting in the future you don't take each year
20 in the future and add them up and get an average which
21 is what you would do, for example, if you were to have
22 the data in the past to come up with an average.
23 The 1100 is what I consider could be withdrawn from
24 year to year if normal precipitation occurred, and
25 have -- and be able to continue to do so, without

1 having a loss out of the groundwater reservoir from
2 storage each year to continue depleting the supply
3 in the reservoir.

4 Q Did you ever calculate a firm supply out of a surface
5 water or groundwater basin? A firm supply of water
6 now, do you know how to do that? As distinguished
7 from an average.

8 A I'm not sure I understand the question.

9 Q You never did compute a firm supply of water?

10 A What is your definition of a firm supply of water?
11 What I'm saying the 1100 is, is that that would be
12 what could be withdrawn on a continuing basis from one
13 year to the next.

14 Q What years did you use to compute that number 1100,
15 then?

16 A That is based on the -- what occurred during the
17 study.

18 Q One year?

19 A A little more than one year.

20 Q That is all I want. Thank you.

21 THE COURT: Any further?

22 MR. SWEENEY: No, I have nothing further.

23 THE COURT: You may step down, Mr. Cline.

24 Thank you.

25 MR. SWEENEY: Your Honor, that would conclude

1 the Government's presentation on the U.S.G.S. report.

2 THE COURT: I think under the order of
3 proof that we established yesterday, then, if I recall
4 it, I don't have it right in front of me, I think now
5 the Tribe is to put on their hydrologist.

6 MR. SWEENEY: Yes, Your Honor.

7 MR. VEEDER: We are ready to proceed, Your
8 Honor. I would like to call Mr. Mel Tonasket,
9 Chairman of the Colville Confederated Tribes.

10

11 MELFORD TONASKET, called as a witness on behalf
12 of the plaintiff, Colville
13 Confederated, Tribes, being
14 first duly sworn on oath,
15 testified as follows:

16

17 MR. VEEDER: I would like to put up the
18 notation map, Your Honor. I don't believe there is
19 any objection.

20 THE COURT: Are you going to be using these?

21 MR. VEEDER: I just think that we can take
22 those down. We are not going to be using them for
23 three or four witnesses.

24 THE CLERK OF THE COURT: Would you please
25 state your full name to the Court.

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THE WITNESS: My name is Melford
Tonasket.

THE CLERK OF THE COURT: Will you spell
your first name, please.

THE WITNESS: M-e-l-f-o-r-d.

THE CLERK OF THE COURT: Thank you.

DIRECT EXAMINATION

BY MR. VEEDER:

Q Mr. Tonasket, would you state your age, please.

A 38.

Q And where do you reside, Mr. Tonasket?

A East Omak.

Q And how long have you lived on the Colville Indian
Reservation?

A Just about all of my life except for when I was in
the Service.

Q And would you state into the record your present
status in the governing body of the Colville Confeder-
ated Tribes.

A I am presently the Chairman of the Colville Business
Council.

Q And is that the governing body?

A Yes, sir.

Q And would you state how long you have been a member

1 of the governing body of the Colville Confederated
2 Tribe.

3 A It will be eight years the first part of July, this
4 coming July.

5 Q And when did you first become acquainted with the
6 subject matter of this case which is depicted on
7 Colville Exhibit marked for identification as
8 Colville Exhibit 1, the No Name Creek basin?

9 A I first became aware of the problem in that area
10 in about 1970.

11 Q And would you relate the circumstances pursuant to
12 which you made that acquaintance?

13 A A tribal member by the name of Edgar Disautel had
14 leased some tribal land at the north shore of Omak
15 Lake where No Name Creek runs into Omak Lake and
16 was trying to develop a resort and a restaurant and
17 he was having water trouble. He had come to the
18 tribe a number of times trying to get help to drill
19 wells and he explained about --

20 MR. PRICE: Your Honor, I'm going to impose
21 an objection, hearsay statements.

22 THE COURT: Well, Mr. Tonasket, you can't
23 testify as to what somebody else said, you can say
24 there was a conversation.

25 THE WITNESS: Well, he said it to us. He

1 came before the Tribal Council and was telling us
2 this, and I was on the Council.

3 THE COURT: All I want to point out is,
4 it is hearsay what somebody else said, but the fact
5 that you had to do something, or you acted because
6 of some conversation, you may say.

7 A Okay, he came to the Tribal Council, asked to help
8 in getting water supply and expressed his concern
9 over the lack of water because of Walton.

10 Q And what action, if any, was taken, to your personal
11 knowledge, in regard to the circumstance to which
12 you have just alluded, Mr. Tonasket?

13 A We assisted him in drilling a well and the next time
14 we went up to what is called No Name Creek now, and
15 looked at the areas that he asked us to look at.

16 Q And what were those areas, Mr. Tonasket?

17 A As best I can remember, the first thing he asked us
18 to look at was a natural dam, granite lip, at the
19 southern boundary of Walton's property. At that
20 time there was no water running over that lip which
21 was a supply for the southern part of No Name Creek.

22 Q Now, did you make any further observations as to the
23 cause of the lack of flow at that point, Mr. Tonasket?

24 A He also pointed out after that the pumping that was
25 being done by Mr. Walton, the diversion into a sump

1 pond on Mr. Walton's property.

2 Q And what was the reasons, were the other reasons,
3 in addition to your concern over the situation pre-
4 sented to you in regard to the resort at Omak Creek --
5 Omak Lake?

6 A I don't know what you mean.

7 Q Well, would you state into the record if you have
8 any knowledge concerning the planting of Lahonton
9 cutthroat trout in the Omak Lake.

10 A Oh, yes, sure. The Lahonton trout were planted in
11 1968 -- I forget the exact month -- which was a
12 couple of years after Disautel, Mr. Disautel came
13 and expressed his problem to us.

14 Q And what were the circumstances that those fish were
15 planted there; can you relate that?

16 A Yes. They were transplanted from Pyramid Lake,
17 Nevada. At that particular time they were an
18 endangered species of cutthroat trout and they were
19 transplanted into Omak Lake because it was a saline
20 lake, and wanted to see if the trout would propagate
21 favorably in Omak Lake which they have, and, I might
22 add, they were using -- they were attracted to No Name
23 Creek which enters into the northern part of Omak
24 Lake.

25 Q What was the relationship, if any, between the fact

1 that Mr. Walton had his operation upstream from the
2 point of entry of Omak Lake into -- of No Name Creek
3 into Omak Lake, and the cutthroat trout fishery?
4 Did you have to take action in regard to any other
5 matter?

6 A Yes, sir. It was observed that when --

7 MR. PRICE: Excuse me, Mr. Tonasket. Are
8 we now talking about personal observations?

9 THE WITNESS: Yes, sir.

10 MR. PRICE: Thank you, Your Honor.

11 A It was observed that the fish were going to -- into
12 the mouth of No Name, pictures were taken of the fish
13 going into No Name Creek, and when the water would
14 cease to flow over that granite lip there was no
15 place for them to go up into, into that creek. That
16 was one.

17 The other problem that we had was the fear of
18 pollution.

19 Q And what evidence of pollution did you observe,
20 yourself, personally?

21 A The cattle, the dairy farm that Mr. Walton had, the
22 cattle would cross No Name Creek up on his property,
23 and his barn, where they do the milking, I presume,
24 where their feed, their hay is stored, is up on the
25 hillside above the creek.

1 MR. PRICE: I'm going to ask that the
2 answer be stricken as not responsive. There has
3 been nothing about pollution or understanding whether
4 or not the facts that were observed -- (inaudible).
5 THE REPORTER: I couldn't hear the last
6 part.
7 THE COURT: Overruled, anyway.
8 MR. VEEDER: At this point I would like to
9 offer in evidence the location map, if I may. That
10 will be Colville Exhibit 1.
11 THE COURT: That is Exhibit 1.
12 THE CLERK OF THE COURT: Pardon?
13 MR. VEEDER: I am offering Colville Exhibit
14 No. 1, the map.
15 THE COURT: Any objection?
16 MR. SWEENEY: No objection from the United
17 States, Your Honor.
18 MR. MACK: No objection.
19 THE COURT: The Tribes' No. 1 is admitted.
20 (Colville Exhibit No. 1
21 admitted.)
22 MR. VEEDER: I would like also to offer
23 into evidence Colville Exhibits 2 through 12, which
24 are the basic documents in some of the decisions.
25 I think all counsel have copies, and it's just the

1 basic documents.

2 MR. SWEENEY: What is it?

3 MR. VEEDER: The basic document.

4 (Counsel discussed exhibits

5 at counsel table.)

6 MR. VEEDER: Those are the basic documents,

7 Your Honor. We have had them marked for identifica-

8 tion.

9 THE COURT: Any objection to Tribes' Exhibit

10 2?

11 MR. SWEENEY: No objection, Your Honor.

12 THE COURT: It will be admitted.

13 MR. MACK: Your Honor, the State of

14 Washington objects to the admission of the exhibit

15 at this time. I haven't had a chance to -- let me

16 state it this way. The exhibit contains not only

17 the court opinions, copies of court opinions, but

18 copies of letters and executive orders and various

19 agreements and documents, and I have not had time

20 to go through the exhibit to see whether those

21 copies that appear there comport with the copies

22 we have, and I would suggest that the document not

23 be admitted until counsel have had an opportunity --

24 THE COURT: Counsel, the Court is going

25 to have to assume that you people have had ample

1 opportunity to look over these exhibits. This has
2 been going on for months.

3 MR. VEEDER: Your Honor, may I also add
4 to that. I gave to the lady here all these documents.
5 I think, -- I have forgotten when it was -- I think
6 it was early in January and we -- however, it's up
7 to --

8 THE COURT: Well, I'm going to admit the
9 exhibits subject to being stricken if we discover
10 some discrepancy, but I have to assume that you have
11 had ample opportunity to examine all of these exhibits.
12 I know they have been in existence and counsel has
13 conferred over them for many, many months.

14 You may proceed -- excuse me, Mr. Price.

15 MR. PRICE: Your Honor, Item No. 10 and 11
16 purporting to be -- (inaudible).

17 THE REPORTER: I cannot hear.

18 THE COURT: Mr. Price, you are not making
19 the record from back there.

20 MR. PRICE: Items No. 10 and 11 would not
21 seem to be appropriate items as exhibits. They are
22 U.S. Supreme Court decisions and I don't feel that they
23 are necessary as part of an exhibit.

24 THE COURT: I see no harm in them.

25 Proceed.

1 Q (By Mr. Veeder) Mr. Tonasket, predicated upon the
2 circumstances that you viewed and the Business Council
3 of the Colville Confederated Tribes viewed, did you
4 proceed to take any action to prevent the continuation
5 of invasion as you have described it, by Mr. Walton, of
6 the water rights of the Colville Confederated Tribes?

7 THE COURT: Just a moment.

8 MR. PRICE: I'm going to object to rephrasing
9 of the testimony by Mr. Veeder and the leading nature
10 of the question.

11 THE COURT: Sustained.

12 MR. PRICE: Thank you.

13 Q (By Mr. Veeder) Mr. Tonasket, were you a member
14 of the Tribal Council when the case of the Colville
15 v. Walton was initiated?

16 A Yes, I was.

17 Q And during that period, Mr. Tonasket, were there
18 other developments in the No Name Creek area involving
19 the rights and interests of the Colville Confederated
20 Tribes, particularly as relates to St. Mary's Mission
21 and so forth?

22 A Yes, sir. What was then St. Mary's Mission Jesuit
23 boarding school for Indian students was having financial
24 difficulty and they asked the Colville Tribe if we
25 would assume the school, take it over, and they would

1 agree to sign over the land, and we would take
2 control of the school, which we did, and we were
3 aware -- there is members of the Tribal Council
4 who went to school at what is now known as Paschal
5 Sherman Indian School, that the school had a small
6 cattle herd and did grow alfalfa to try and
7 supplement their own income.

8 Q And what plans did you proceed with under those
9 circumstances, Mr. Tonasket? When did you take
10 over the administration of the school?

11 A The first thing we did was to get the school chartered
12 so it could have its own school board and try to
13 separate politics from the administration of the
14 school. We tried to develop plans for expanding
15 its own income so that it wouldn't be so costly
16 to the Tribe and so that we wouldn't be so dependent
17 upon federal dollars, outside monies. With those
18 plans it was natural for us to look at expanding
19 the farming operations and the cattle herd, which
20 we did.

21 Q Now, Mr. Tonasket, in connection with the expanding
22 of the development at the Mission School as it relates
23 to the No Name Creek Valley, what else did you do
24 and what land did you take into consideration when
25 you made that, made those plans?

1 A There was a number of problems that we had to overcome
2 which were financial problems to try to get some
3 federal money to develop that land, put it in feed
4 and to develop the irrigation for that land. The
5 federal government's response was that it had to
6 be proven economically feasible before they would
7 put money into it. At the time that we started we
8 were told that due to the size it was not economically
9 feasible and they wouldn't give us any money. So,
10 we leased what is known as the Peters' Allotment just
11 to the north of Mr. Walton. It's between Paschal
12 Sherman Indian School and Mr. Walton's property and
13 we also leased Allotment 901 and 903 and incorporated
14 that into one farm package.

15 Q And what about the lands at the school itself; did
16 you have any transactions in regard to those?

17 A That land was deeded to the Tribe. It was also
18 included in the farm package.

19 Q Now, would you state into the record, briefly, the
20 history of the development of what has been alluded
21 to here as the Colville Irrigation Project. Who
22 undertook that and under whose direction was that?

23 A The Colville Tribal Council undertook it because we
24 were the ones that could get the money. We made a
25 number of trips to Washington, D.C. to get both

1 technical help and financial help to develop the
2 farm lands. We were successful in getting the
3 financial help and the technical assistance. We
4 did develop the irrigation system that was in
5 operation this year. After everything was developed
6 and under production we give the operations over to
7 the school. The school is -- they operated it at
8 the -- after it was developed and they presently have
9 the feed or the hay that was grown on there and are
10 presently selling it.

11 Q Have you had an appraisal as to the value of the hay
12 that was taken off this season, Mr. Tonasket?

13 A Approximately \$21,000.

14 MR. VEEDER: Now, Your Honor, I have marked
15 -- I want to have offered for identification what we
16 refer to as the Colville Water Code.

17 Q Mr. Tonasket, what was the situation you had
18 encountered in regard to, as a member of the Tribal
19 Council in regard to the management of the water
20 resources on the Colville Indian Reservation?

21 A There has been a void ever since that I have been on
22 the Tribal Council until, it was the spring of, I
23 think, 1973, here in Spokane at the Holiday Inn.
24 Representatives from the Department of the Interior
25 and the Associate Solicitor for Indian Affairs came

1 out to meet with the Tribal leaders of the Northwest
2 Affiliated Tribes to explain to them their plans of
3 developing Secretarial Water Regulations, and at that
4 meeting the Tribes objected very, very strongly and
5 it was agreed by the representatives of the Interior
6 at that particular meeting to support the concept
7 of the Tribes, develop their own water regulations
8 and that they would assist those tribes that couldn't.

9 Following that meeting, the Colville Business
10 Council met and agreed that we would develop our own
11 water regulations because at that time there was none,
12 neither federal nor tribal.

13 Q And would you state into the record, then, what did
14 the Colville Confederated, the Business Council of
15 the Colville Confederated Tribes, did they proceed
16 in the development of the water code of their own?

17 A Yes, it took almost two years to develop a code that
18 was drafted and redrafted three or four times. We
19 were very particular on making sure that due process --

20 MR. SWEENEY: Your Honor, just a moment.
21 I think he is going beyond the bounds of the issue.

22 THE COURT: Sustained.

23 Q (By Mr. Veeder) Now, I hand you, Mr. Tonasket, the
24 Colville Confederated Tribes' Exhibit marked for
25 identification 2/13, and ask you to explain into

1 the record what is that document.

2 A Colville Tribal Water Code.

3 Q And is that the Code, to your personal knowledge,
4 that was approved by resolution of the governing
5 body of the Colville Confederated Tribes?

6 A Yes.

7 Q Is that document now in force and effect in operation
8 by the Colville Confederated Tribes?

9 A Yes.

10 Q And what are your responsibilities as Chief Administra-
11 tor of the Business Council? What do you do under
12 that Colville Confederated -- under the Colville
13 Water Code?

14 A As Chairman, it is my responsibility to sign all of
15 the water permits issued to individuals.

16 Q And are there criteria to which you adhere in regard
17 to the method of consideration, approval of those
18 water permits, Mr. Tonasket?

19 A Yes.

20 THE COURT: Mr. Price. Excuse me.

21 MR. PRICE: Your Honor, this might be
22 better for cross-examination, but I would like to
23 ask on voir dire, possibly I'm ahead of myself,
24 maybe it has not been offered, but before we go
25 too much in evidence on it, I think it should be

1 offered or not.

2 MR. VEEDER: Go ahead if you have got some
3 questions.

4 THE COURT: I will assume you are offering
5 the exhibit.

6 MR. VEEDER: I will make the offer now,
7 yes.

8 THE COURT: Mr. Price, you may voir dire.

9
10 VOIR DIRE EXAMINATION

11 BY MR. PRICE:

12 Q Mr. Tonasket, when was this code adopted?

13 A It was adopted, I believe, in 1975 -- 1974.

14 Q And --

15 A It's -- go ahead, I'm sorry.

16 Q Excuse me. I didn't -- was it '74 or '75?

17 A The resolution, 1974-334 is dated 5-6-74. The
18 resolution went before the Secretary -- was sent to
19 the Secretary of Interior for signature. He never
20 did respond and I think it was in '75 we passed
21 another resolution enacting the code.

22 Q Without the Secretary of Interior's approval; is
23 that correct?

24 A Yes.

25 Q And, in fact, has not the Secretary of Interior issued

1 a directive that there was not to be a Tribal Code
2 adopted?
3 A Not at this particular time. There was no response,
4 negative or positive.
5 Q Is there not now, has -- did not Secretary of Interior
6 Morton issue a directive that Tribal Code, water
7 codes, were not to be adopted?
8 A Morton?
9 Q Yes.
10 A Not that I'm aware of.
11 Q Are you aware of any Secretary of Interior who has
12 issued such a directive?
13 A I've heard, but I have not seen, a document that is
14 signed by a Secretary.
15 Q And this particular code is not approved by the
16 Secretary of Interior?
17 A No, sir.
18 Q Thank you.
19 MR. VEEDER: I make the offer, Your Honor.
20 THE COURT: Mr. Sweeney.
21 MR. SWEENEY: I'd like to ask a couple
22 of questions of Mr. Tonasket.
23 . . .
24 . . .
25 . . .

1 VOIR DIRE EXAMINATION

2 BY MR. SWEENEY:

3 Q About the water code, I believe you said that it
4 was enacted in or promulgated by the Tribal Council
5 in 1974.

6 A Yes, sir.

7 Q And you say it is effective now?

8 A Yes, sir.

9 Q You said that it was not approved by the Secretary
10 of Interior?

11 A No, sir.

12 Q Would you turn to paragraph 12.3 which appears on
13 page 27.

14 A Yes.

15 Q Would you read that paragraph.

16 A 12.3 is effective date.

17 "The effective date referred to herein
18 shall be a date set by resolution of the
19 Colville Business Council after approval
20 of the code by the Secretary of Interior."

21 MR. SWEENEY: Well, Your Honor, I would
22 submit, as far as -- that is definitely a copy of
23 the code that was promulgated by the Tribal Council.
24 However, I don't think it should be admitted as
25 being effective as of this time because, as Mr.

1 Tonasket explained, there has been no approval by
2 the Secretary and the code, by its own terms, requires
3 such an approval.

4 MR. VEEDER: May I ask a question.

5
6 DIRECT EXAMINATION

7 BY MR. VEEDER:

8 Q Mr. Tonasket, under the circumstances, and you have
9 been fully aware of this proviso that is in there,
10 and how long did you wait on this thing, Mr.
11 Tonasket, before the Tribe took action?

12 A Well over a year.

13 Q And -- go ahead.

14 A And numerous trips to Washington, D.C. just to find
15 where this code was, on whose desk it was.

16 Q And then what action did you take, the Colville
17 Business Council?

18 A We passed a resolution within the Council due to the
19 circumstances that, and due to the void of not having
20 a code, we enacted the code.

21 Q Without the Secretary.

22 A Without the Secretary's approval.

23 MR. VEEDER: I renew the offer, Your Honor.

24 THE COURT: Mr. Price.

25 MR. PRICE: Your Honor, the Tribe may have

1 a cause of action against the Government, a mandate
2 or something of that nature, but the code is not in
3 effect and I would suggest that it should not be
4 admitted.

5 THE COURT: Counsel, under the pretrial
6 order, at page 34, I think this is an issue which
7 was before the Court by an agreement of counsel in
8 the pretrial orders.

9 MR. VEEDER: That is right.

10 THE COURT: So, I'm going to admit the
11 exhibit.

12 MR. MACK: Your Honor, may the State just
13 say this: That the State would object to the
14 admission of the exhibit if it is being admitted
15 for the truth of all of the statements stated therein,
16 and especially the State objects to that with regard
17 to the first page of the exhibit which has various
18 statements with regard to the -- which go to the
19 questions of the Colville Tribes' continued existence
20 and what will help to continue that and what will go
21 against that, and the State has no objection to the
22 document being admitted for proof that the document
23 was, in fact, passed by the Business Council, but it
24 does have objections that there are hearsay statements
25 that are in there that should not be admitted for

1 truth.

2 THE COURT: Well, it is admitted by the
3 Court that this is, in fact, what the Tribe has done.

4 MR. VEEDER: That is correct.

5 THE COURT: And I recognize there is an
6 issue between the United States and the Tribe as set
7 forth in the pretrial orders which the Court has to
8 rule on before we get out of this.

9 MR. VEEDER: And I also think there is
10 an issue between the State on the same problem. May
11 we proceed?

12 THE COURT: You may.

13 Q (By Mr. Veeder) Now, Mr. Tonasket, would you just
14 briefly state into the record and in regard to the
15 practice and procedures adhered to when the issue
16 of a permit comes up under the circumstances. Who
17 is the primary agent of the Colville Confederated
18 Tribes under the circumstances?

19 A If I might go step by step, what an individual does
20 if they want a water permit within the boundaries
21 of the reservation, the individual, whether they are
22 Indian or non-Indian, is sent an application, a permit
23 application from Mr. Gary Passmore who is the water
24 hydrologist and our watermaster. Mr. Passmore reviews
25 the application to verify that the amount of water

1 that is requested is necessary, to verify that the
2 quality of water is maintained, and that the water
3 is there. Then that application is recommended
4 either approval or disapproval or whatever changes
5 might be made to the recommendation -- or the
6 application -- then it is forwarded to the Committee,
7 the Water Committee that also reviews the application.
8 There is time given for people to object who might
9 have a problem with the issuance of the permit, by
10 that I mean neighbors or users of the same aquifer
11 or the same stream. Then the second recommendation
12 is given by that Committee either to approve or
13 disapprove and then from there it comes to the
14 Chairman's desk for signature.

15 Q And is there provision for appeal or any other act
16 in the operation of this matter under your direction?

17 A Yes, sir.

18 Q And has appeal ever been taken, to your knowledge?

19 A Not to my knowledge.

20 MR. VEEDER: I have no further questions.
21 -- Just one additional question.

22 Q Mr. Tonasket, are you familiar with the code -- the
23 report of the United States Geological Survey in
24 regard to the No Name Creek groundwater aquifer and
25 the stream system?

1 A Very little. I have glanced at it but I'm not an
2 authority on hydrology or geology or those things.
3 Q Well, have you had an occasion to consider the
4 expansion of the use of water in Omak -- No Name
5 Creek by the capture or expanding use of water by
6 the diversion of water from Omak Creek into the system?
7 A Yes, sir.
8 Q And what is the policy of the Business Council in
9 that regard?
10 A The Business Council, after reviewing the situation,
11 passed a resolution last Monday opposing the U.S.G.S.
12 report. It is our position that it would get us into
13 more trouble, cause more trouble if it did expand
14 the area and we probably would wind up in litigation
15 with the users in Omak Creek area.
16 MR. VEEDER: I would like to offer in
17 evidence as part of Exhibit 2, I think that would
18 be, the objections to which I attach a copy of
19 resolutions that were adopted Monday. That would
20 be 2/16, I think.
21 MISS ECKERT: We couldn't hear, Mr. Veeder.
22 MR. VEEDER: That is the resolution adopted
23 by the Colville Confederated Tribe objecting to the
24 report of the United States Geological Service which
25 is attached to the objections that have already been

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filed.

The resolution and objections are offered, Your Honor.

THE COURT: Tribes' Exhibit 2/14, that's the resolution?

MR. VEEDER: That is right.

THE COURT: Any objections?

MR. SWEENEY: Well, it's just the resolution that is going in, not all the objections?

MR. VEEDER: No, no.

MR. SWEENEY: Not all of the objections that Mr. Veeder presented yesterday?

THE COURT: Just the resolution.

MR. SWEENEY: Well, as being a resolution of the Tribe, we have no objection.

MR. VEEDER: Well, I will separate it, then, from the objections.

THE COURT: Well, it's marked, Counsel. It's just a two-page --

MR. VEEDER: No, I think we -- you received the wrong one, Your Honor. I will give you a copy of the resolution. I will pull it off the objections and put it into the record.

THE COURT: What is the one that was just handed to me marked 2/14?

1 MR. VEEDER: I think, Your Honor, that
2 relates to the development of the irrigation project,
3 Your Honor. That was unfortunate that you had that.
4 THE CLERK OF THE COURT: That is not the
5 one?
6 MR. VEEDER: No.
7 THE CLERK OF THE COURT: Okay.
8 MR. VEEDER: The resolution was attached
9 to the objections, Your Honor, and made a part of
10 them. I just thought I would put the whole thing
11 into the record. That has now been signed and
12 affirmed by the Colville Confederated Tribes, on
13 the back part.
14 THE COURT: Does it consist of six sheets
15 beginning with the caption Colville Confederated
16 Tribes, Colville Business Council, Resolution 1978-74?
17 MR. VEEDER: That is correct.
18 THE COURT: That will be marked as what?
19 MR. VEEDER: That would be the --
20 THE CLERK OF THE COURT: 2/16.
21 MR. VEEDER: 2/16, that's right.
22 Do you have objection?
23 MR. SWEENEY: Is that the Tribal Council
24 Resolution?
25 THE COURT: The Tribal Council resolution.

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Mr. Price?

MR. PRICE: That is without the objections
of the Council?

THE COURT: That is correct.

MR. PRICE: I have no objection.

THE COURT: Tribes' Exhibit 2/16 is
admitted.

(Colville Exhibit 2/16
admitted.)

THE COURT: Cross-examination. Mr. Price.

MR. PRICE: Thank you, Your Honor.

Good morning, Mel.

THE WITNESS: Good morning.

CROSS-EXAMINATION

BY MR. PRICE:

Q Mr. Tonasket, in connection with the fisheries, the
Lahonton trout that was implanted in Omak Lake in
1968, is it not a fact that even though the fish
may have wanted to migrate to the No Name Creek
stream that the physical contour of the stream as
it entered the lake physically prevented them from
going up that stream, in any event; is that not
correct?

A No. They -- they could go up to that granitic lip,

1 or that granite lip, if there was water flowing.

2 Q All right. On the exhibit there -- I can't see the
3 number from here. Can you see the number of the
4 exhibit?

5 THE COURT: No. 1.

6 Q (By Mr. Price) Exhibit 1, it depicts Omak Lake
7 adjacent to some green, land marked in green; is
8 that correct?

9 A Yes.

10 Q In drawing your attention to the northerly most
11 point of Omak Lake where it is adjacent to the green
12 land marked --

13 A Yes.

14 Q Would you describe the physical features of the creek
15 at that area. Was there a main stream channel or did
16 it enter into a swamp area at the head of Omak Lake?

17 A There is a --

18 MR. VEEDER: May I ask during what period
19 you are speaking of, Mr. Price.

20 MR. PRICE: The period when Mr. Tonasket
21 testified he observed the trout attempting to enter --

22 MR. VEEDER: All right.

23 MR. PRICE: -- No Name Creek.

24 A There is both a channel and a swamp. There is both.

25 Q There is both?

1 A Yes.

2 Q And you are suggesting that in 1968 that channel
3 was sufficient for fish to go up it?

4 A No. I said that they went up -- they were attracted
5 to it and they started to go up but -- at which point
6 we took pictures of. Later on the channel had to
7 be fixed. We did clean it out, put plastic on the
8 bottom and some gravel on the bottom to enable them
9 to get up as close to the lip as possible.

10 Q In fact, the Tribe undertook a major renovation of
11 the No Name Creek stream as it entered Omak Lake to
12 facilitate these fish entering it and for spawning
13 purposes; correct?

14 A Not as it enters Omak Lake, up higher, up away from
15 the Lake more, up into the swamp area.

16 Q Okay, but that continued all the way down to the
17 head of Omak Lake; did it not, your project?

18 A Down -- as best I know, down to the bridge where the
19 bridge goes over, used to go into the boat club.

20 Q And that is where Omak Lake adjoins, connects with
21 No Name Creek?

22 A Yes, in that area.

23 Q Okay. When was that major project undertaken to
24 change the stream contour to facilitate the fishery?

25 A I don't -- I don't rightly remember.

1 Q Would it have been several years after the implanting
2 of the fish in Omak Lake?
3 A Oh, yes.
4 Q And between the time the fish were first planted in
5 the lake and until that change in the creek took
6 place, the fishery did survive; did it not?
7 A Yes.
8 Q And it did thrive; did it not?
9 A Yes.
10 Q Mr. Tonasket, in connection with the Tribes' acquiring
11 ownership of the St. Mary's Mission property, did
12 you actually take that land by a conveyance, by some
13 titles?
14 A Which land, I'm sorry.
15 Q St. Mary's Mission.
16 A Yes, except for where the church was at.
17 Q Was that conveyed to you by a patent or a deed?
18 A Yes, and it was received in trust by the United
19 States Government.
20 Q And that was with the approval of the Colville
21 Confederated Tribe?
22 A Yes, sir.
23 Q And do you recall whether or not there was any
24 reference to the water rights, the fact that water
25 rights might be reserved from the conveyance to you

1 A Not that I'm aware of. I heard of no discussion
2 concerning that.

3 Q Did the review of the record indicate that the
4 original allottee of those lands, Alexander Snitkin,
5 had reserved the water from those lands?

6 MR. VEEDER: Object to the question. It
7 calls for a legal conclusion from this witness.

8 THE COURT: He may answer, if he can.

9 A No, I heard of no discussion concerning the water
10 rights on the conveyance of what is now known as
11 Paschal Sherman Indian School land.

12 Q And, as I understand it, the lands that you acquired
13 would be to the north of the northerly-most green
14 shaded area on Exhibit No. 1; is that correct?

15 A Yes.

16 Q And, as I understand it, it was not found economically
17 feasible to put just the land that you acquired under
18 production without additional lands.

19 A Just the Paschal Sherman Indian School lands that
20 was conveyed to us?

21 Q Correct.

22 A That is right.

23 Q And, as a matter of fact, is it not true that the
24 Board in charge of the Paschal Sherman Indian School
25 did not even put the 40 acres of alfalfa that are

1 adjacent to the school under irrigation?

2 A When? Lately?

3 Q Yes.

4 A Yes, I guess, if that is -- . Yes.

5 Q Now, is it not true that the shaded areas of green
6 on Exhibit No. 1 are not owned by the Colville
7 Confederated Tribe in any manner, are they, as of
8 this time?

9 A No, sir.

10 Q Those are allotments that have been leased by the
11 Tribe; is that correct?

12 A Yes, sir.

13 Q And the allotments are owned by individual Indian
14 owners; is that correct?

15 A Yes, sir.

16 Q And to your knowledge, have the individual Indian
17 owners of those allotments ever participated in any
18 resolutions of the Confederated Tribe about whether
19 water from Omak Creek should be diverted or applied
20 to those lands?

21 MR. VEEDER: I object, Your Honor.

22 A Not to my knowledge.

23 MR. VEEDER: It goes beyond the scope of
24 this litigation. Certainly limited this to Omak --
25 to No Name Creek. The entire system is involved

1 here but I don't believe in any way can this witness
2 testify in regard to the diversion and use of water
3 from Omak Creek other than as he has testified, the
4 Tribe has decided it didn't want it done.

5 MR. PRICE: I have asked, Your Honor,
6 whether this witness knows whether the allottees
7 joined in that decision.

8 THE COURT: He may answer.

9 MR. PRICE: Thank you.

10 A Repeat it once more.

11 Q Are you familiar with whether or not the allottees of
12 the area shaded in green participated in the decision
13 of the Colville Confederated Tribe not to use water
14 from Omak Creek for those properties?

15 A Not that I'm aware of.

16 Q The leases for those respective properties run out
17 in 1978 and 1979; do they not?

18 A Yes, sir.

19 Q And if those leases are not renewed, the wishes or
20 desires of the Colville Confederated Tribe would
21 have no effect whatsoever as to the use of those
22 lands or water in connection with those lands; would
23 it?

24 MR. VEEDER: I renew the objection, Your
25 Honor. I renew it. He is calling for a conclusion.

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THE COURT: I have to sustain this one.

Q (By Mr. Price) Mr. Tonasket, were formal lease documents entered into with the allottees in connection with the land area shaded in green on Exhibit no. 1?

A Yes.

Q And are those documents available? Do you have those available?

A No, I don't.

MR. VEEDER: That is going to be offered in evidence, Mr. Price.

MR. PRICE: Thank you, Mr. Veeder.

MR. VEEDER: I was going to wait until Mr. Corke was on the stand, but I can go ahead now.

THE COURT: No, go ahead.

Q (By Mr. Price) Do you have knowledge as to what is to happen to the improvements on those allotments at the termination of the leases? In other words, are any irrigation facilities to remain with the land and returned to the allottees, or do they remain in the ownership of the Tribe and can be removed by the Tribe?

MR. VEEDER: I renew the objection. Calls for a legal conclusion, Your Honor.

THE COURT: Well, I think we have to examine the instrument itself to ascertain that. I

1 will sustain the objection.

2 Q (By Mr. Price) Mr. Tonasket, you say the value of
3 the hay taken off of the lands this year is \$21,000.
4 How did you arrive at that figure?

5 A I said approximately \$21,000 at the rate that hay
6 was selling for. At the time that we asked for an
7 appraisal it was selling for about \$65 a ton.

8 Q Now, is that hay actually sold by the school or is
9 it used by the school or is it a combination?

10 A Combination.

11 Q And do you know whether or not, in fact, any hay
12 was sold this year?

13 A Yes, sir, about 116 tons have been sold.

14 Q And are you familiar with the fact that Mr. Walton
15 attempted to buy some, purchase some of that hay
16 and was refused, this year?

17 A No, sir. That is -- that is the school board --
18 or the School sells, not the Tribe.

19 Q Okay. In terms of the water code, does that water
20 code establish a criteria as to allocation of water
21 between an Indian and a non-Indian?

22 A Yes.

23 Q And what is that criteria?

24 A I don't remember the exact wording, but if there is
25 a shortage of water, the Indian gets a priority use.

1 Q Mr. Tonasket, do you know how much money the Tribe
2 has invested in the development of this irrigation
3 project on the lands in question?
4 A No, not offhand. We have got the information, but
5 I don't have it offhand.
6 Q Do you know who would have that information?
7 A Our expert should have it.
8 Q Do you know specifically who?
9 MR. VEEDER: Mr. Price.
10 Your Honor, we are going to have Mr. Corke
11 testify as to the money expended.
12 THE COURT: This witness has said he doesn't
13 know, so let's go to something else.
14 Q (By Mr. Price) Mr. Tonasket, did you have to make
15 application to the Federal Government for the funds
16 that you received and employed in the development of
17 this irrigation project?
18 A I don't know what you mean by "make application."
19 Q Well, how did you obtain these funds? Were they
20 grants or were they loans?
21 A Contracts.
22 Q And does this money have to be paid back?
23 A No, sir.
24 Q Okay. Did you have to fill in any application or
25 any documentary information at all as to what use

1 these funds would be expended on, or for?

2 A If you are asking did they have to be accounted for,
3 yes.

4 Q Is there any indication in there that these funds
5 would be used to develop an irrigation project that
6 would discriminate between Indians and non-Indians,
7 say, specifically.

8 MR. VEEDER: Object to the question. The
9 word "discriminate" is an offensive word. I don't
10 believe the word "discriminate" is a proper one. I
11 think the witness has outlined the basis upon which
12 the Colville Code is going to be operated.

13 THE COURT: Overruled.

14 A Okay, ask me once more.

15 Q Do you know whether or not the Tribe's request in
16 application for funding made any references to
17 whether there would be discrimination between Indians
18 and non-Indians in terms of how the water might be
19 employed after the irrigation system was developed?

20 A No, sir. There was no discussion about discrimination
21 at all. We asked for money to develop an irrigation
22 system and described what the system would be like,
23 about how much water it would utilize, and the acreages
24 involved, and that is what we got the money based on.

25 MR. PRICE: I have no further questions.

1 Thank you, Your Honor.

2 Thank you, Mr. Tonasket.

3 THE COURT: Does the State have cross-
4 examination?

5 MR. MACK: Yes, Your Honor.

6

7

CROSS-EXAMINATION

8

BY MR. MACK:

9

Q Mr. Tonasket, do you have a copy of the Tribal
10 resolution with you which has been admitted as an
11 exhibit?

12

A Which resolution? Objecting to the --

13

THE COURT: It would be 16. You can hand
14 him 16.

15

A All I have before me is the code.

16

Q Well, I am handing you what is Plaintiff's Exhibit
17 2/16 and has been admitted as such.

18

It is correct, isn't it, that you are familiar
19 with that resolution?

20

A Yes.

21

Q And did you vote on that resoltuion?

22

A No, sir.

23

Q You did not?

24

A No, sir. I had a doctor's appointment that Monday.

25

Q Did you participate in any way in the drafting of

1 the resolution?

2 A The language in draft form was given to me over the
3 telephone, was given to my secretary over the tele-
4 phone. They gave me a copy. I seen the draft copy,
5 agreed with it, and asked them to present it at the
6 Monday meeting.

7 Q Mr. Tonasket, the resolution refers to the effect of
8 de-watering and mining of the groundwater aquifer as
9 proposed by the report of the United States Geological
10 Survey, and that statement appearing on page 3 of the
11 resolution in the last paragraph. What is your
12 understanding of the term "mining" of the groundwater
13 aquifer?

14 A My understanding, realizing that I am not a hydrologist,
15 is that by pumping or extreme pumping, you are taking
16 water farther away from what would be the normal
17 supply for your well.

18 Q And is that your sole understanding of the term?

19 A I could draw pictures, I suppose, but I don't know
20 how to explain it any better to you than that.

21 Q Does your understanding include the -- or do you
22 have any knowledge of the -- let me ask you this:
23 do you have any knowledge of whether the Business
24 Council's understanding of the term is similar to
25 yours?

1 MR. VEEDER: And I object to that, Your
2 Honor. He can't.

3 THE COURT: Sustained.

4 Q (By Mr. Mack) Does the term in your understanding
5 contain any other element, such as depletion over
6 time of the water available in the aquifer?

7 A No, I don't know what you're -- I don't know what
8 you're asking me.

9 Q Was it your understanding that the report of the
10 United States Geological Survey proposed or suggested
11 or approved the notation of a mining of the aquifer
12 which supplies No Name Creek?

13 A My understanding of what the report suggests or is
14 hinting at, the way I interpret it, is that the
15 thought would be to put in either another well or
16 do some heavy pumping which would expand the water-
17 drawing area outside of the No Name Creek aquifer
18 that we are presently utilizing, and in doing that
19 would expand us into the Omak Creek Valley or on
20 the other side of Omak Creek down past -- in looking
21 at the exhibits -- out toward Paschal Sherman Indian
22 School, and would dry up some of the wells that we
23 have already got in existence and it would have an
24 effect on our existing irrigation system.

25 Q Is it your understanding that the waters of No Name

1 Creek have, in fact, in the past been polluted from
2 any source, to your knowledge?

3 A In the past, from any source?

4 Q Yes. Do you know of any pollution of No Name Creek?

5 A The only time that I was made aware of it was prior
6 to the time that we got, we came to the court and
7 asked for help to stop the cattle from polluting
8 the creek.

9 Q Which cattle are you referring to?

10 A Mr. Walton's dairy cattle.

11 Q Is Mr. Walton the only individual or entity which
12 has maintained cattle, to your knowledge, in the
13 No Name Creek Valley?

14 A No, sir, there -- but it is before my time. It would
15 be hearsay.

16 Q Is there any other cattle now in the valley other
17 than Mr. Walton's?

18 A There is some cattle over around on 903, way over
19 around on the side, but not over by the creek, that
20 I'm aware of, except for up north where Paschal
21 Sherman's livestock is at, up by Omak Creek.

22 Q There is livestock at the school now; is there not?

23 A Yes.

24 Q And do you know how long there has been livestock
25 at the school or in the area of the school?

1 A Ever since I can remember.

2 Q Did you ever observe Mr. Walton's cattle crossing

3 No Name Creek?

4 A Yes.

5 Q And did you ever observe them actually polluting

6 the creek or simply crossing it?

7 A I don't know how you want me to describe that.

8 Q Well, why don't you use the most direct terms you

9 can think of.

10 A I did that once and my wife hit me.

11 Q You yourself have observed pollution of the creek

12 by Mr. Walton's cattle; is that correct?

13 A I -- I observed cows crossing the creek. I didn't

14 stop to observe to see if they went to the toilet

15 in the creek, if that is what you want me to say,

16 or getting at, but just the crossing of the creek,

17 and the disturbance of the water, and I know that

18 cattle aren't wise enough to say I'm not going to

19 go to the toilet now that I've got to the water.

20 Q What would be the effect of any pollution in the

21 creek, adverse effect?

22 A What would be the adverse effect?

23 Q Yes.

24 A Of pollution in the creek?

25 Q Yes.

1 A I don't know, and that is one of the reasons that
2 we hired Dr. Dave Cook who was an expert in the
3 Lahonton trout to give us advice on that. It was
4 under his advisement that we took the steps we
5 did to stop the pollution.

6 Q Is it fair to say that your concern on pollution
7 of No Name Creek is limited to the effect it would
8 have on the Lahonton cutthroat trout fishery?

9 A My personal knowledge is limited, yes.

10 Q To that, to that source, to the fishery?

11 A Yes.

12 Q Now, you stated that Mr. Disautel had leased land
13 at the north end of Omak Lake; is that correct?

14 A Yes.

15 Q And that a well was drilled there?

16 A If I remember right, there was about three wells
17 drilled down in that area.

18 Q Do you know who drilled those?

19 A No, I don't.

20 Q Do you know their depth?

21 A They varied. I don't have the exact depths.

22 Q Do you know the purposes for the wells?

23 A Yes. Well, two purposes, one was for domestic use.
24 He had a trailer house. He lived there. The other
25 one was for the restaurant. He constructed a metal

1 building for a restaurant right at, right next to the
2 lake, right by the lake.

3 Q At the north end of the lake?

4 A Yes.

5 Q And he finished construction of that building?

6 A Yes.

7 Q Was it ever opened as a restaurant?

8 A No, sir.

9 Q You have stated that you had observed that at no
10 time was water flowing over what you have described
11 as the granite lip when you observed it. When was
12 that?

13 A I said at no time?

14 Q Well, you stated, as I understand it, that you observed
15 the granite lip and had not observed any water flowing
16 over it at one time. What was that time?

17 A Oh, it was in the summer.

18 Q Of when?

19 A Like in August. It was just before we got into the
20 case, in about 1970. There were a number of times,
21 sometimes it would run very little, sometimes it
22 wouldn't run at all.

23 Q At the time -- well, in August of 1970 when you
24 observed it, did you also make any observation of
25 any diversions being performed by Mr. Walton or any

1 pumping done by Mr. Walton at the same time?

2 A Yes.

3 Q And what did you see?

4 A When the pumping, when all of those things were going
5 on up above, the diversion into the sump pond and the
6 pumping was going on, you would see the water running
7 over the lip start to decrease after awhile.

8 Q Now, Mr. Tonasket, did you ever attend St. Mary's
9 Mission school yourself?

10 A No, I never.

11 Q How long have you been familiar with the school being
12 located there, yourself?

13 A Since I was seven years old.

14 Q And do you have any idea how many students attended
15 St. Mary's School from the time you first became
16 familiar with it to the present time?

17 A No, not -- no, I don't remember. From the time I
18 was seven years old I don't remember how many students
19 were in school.

20 Q How many students are in the school now at the
21 Paschal Sherman school?

22 A Approximately 181 or so.

23 Q Did you ever observe in the past before the school
24 was changed from St. Mary's Mission to the Paschal
25 Sherman of the growing of any crops in the area of

1 the school? I thought you testified you had seen
2 wheat.

3 A Yes, alfalfa.

4 Q Alfalfa. Any other crops in the area?

5 A Just alfalfa and gardens.

6 Q And do you know whether any irrigation was performed?

7 A Yes.

8 Q And what did you -- did you observe any irrigation
9 performed near the school before it became the Paschal
10 Sherman school?

11 A Oh, yes. There is a well in the middle of the field
12 of --

13 MR. MACK: May I approach the exhibit?

14 THE COURT: (Nodding yes.)

15 A It's up on the other side of Omak Creek. On the
16 north side of Omak Creek there is a flat field,
17 alfalfa field, between Paschal Sherman school and
18 Omak Creek.

19 Q In Section 9?

20 A Yes.

21 Q Was irrigation performed from the well, that you
22 observed?

23 A I presume it was from the well. I never stopped to
24 look, but there was sprinklers going out there.

25 Q Do you know of any other source of irrigation for

1 the fields in the vicinity of St. Mary's Mission school?

2 A I'm not personally aware of them.

3 Q Were those fields irrigated for as long as your
4 memory can go back for the existence of the school?

5 A Until the last couple of years, they didn't put any
6 alfalfa because they didn't have the money.

7 Q But going back before that, when you first were up
8 in that area, you know, when you were little and all
9 of that, and you saw it, was irrigation going on
10 through those years?

11 A I couldn't say it was going on all that time, just
12 whenever -- I was little and you don't look for
13 things like that, really. We used to play up there
14 sometimes. We used to go fishing up by what they
15 call the Mission Falls and that's where we would, you
16 would notice because you would have to walk by there.

17 Q Where is Mission Falls? Is that on Omak Creek?

18 A Yes.

19 Q And what fish could be caught there?

20 A Trout.

21 Q And do you know whether those, that stream was --
22 whether those trout were artificially planted in
23 that stream or naturally appeared there? Do you
24 have any knowledge of that?

25 A There -- I would have to guess. They have always

1 been there ever since that I can remember. I know
2 that we, since I have been on the Council, we do
3 take and plant fish in most all of our streams now,
4 but most of them already were naturally supported.
5 Q Did the Council ever plant anything than the Lahonton
6 trout in either Omak Lake or in No Name Creek?
7 A Not that I'm aware of.
8 Q In your lifetime did you ever go fishing in No Name
9 Creek?
10 A No, sir.
11 Q Any reason why not?
12 A Yes.
13 Q What was that?
14 A I was afraid of rattlesnakes. There is a lot of
15 rattlesnakes in that area.
16 Q Do they congregate around No Name Creek or something?
17 A Well, just down through that swamp and that whole --
18 that whole area down there is good for rattlesnakes.
19 Q Which swamp are you referring to? Is that near the
20 southern end of the creek?
21 A Yes.
22 Q And --
23 A Between the granite lip and the lake.
24 Q Could you just describe that area. You described it
25 as a swamp. Could you describe it in any more detail?

1 A Just as -- it's kind of -- I've never been out in
2 there. Just a lot of trees and a lot of underbrush
3 and it divides up some old land that had been under
4 agriculture in 901 and the beach. Just looks swampy,
5 got some reed-looking plants in it, and a lot of
6 undergrowth.

7 Q Mr. Tonasket, how many trout were planted in 1968
8 in Omak Lake?

9 A Lahonton?

10 Q Yes.

11 A I don't know the number.

12 Q Do you know who planted them?

13 A I'm going to have to rely on Dr. Cook.

14 Q He should know that?

15 A Yes.

16 Q And they were obtained from Pyramid Lake, Nevada,
17 you say?

18 A Yes, sir.

19 Q You referred to them as an endangered species. What
20 is your understanding of an endangered species?

21 A Very few of them.

22 Q Is that your own definition or have you taken a
23 definition from some government agency?

24 A No, sir. We were approached by the Federal Government
25 to consider the possibility of putting those fish

1 in there because they were -- they were getting fewer
2 in Pyramid Lake and we did agree to do that and that
3 is about the best that I remember. It was their
4 references that it was an endangered species, not ours.

5 Q To your knowledge, were there any other fish in that
6 lake before you planted Lahontan trout in 1968?

7 A Yes, there is -- I don't know the name of the fish,
8 but there is some little tiny funny looking fish that
9 there is nothing like, in any of the streams or any
10 of the other lakes up in our country.

11 Q And when you say "tiny" --

12 A They are small, fingerling size. I can best remember
13 them. Most of them had worms going through them and
14 they were -- I never did see any bigger ones.

15 Q Now, you stated that you had observed the Lahontan
16 cutthroat trout going into the mouth of No Name Creek;
17 is that correct?

18 A Yes, sir.

19 Q And did you ever make a reconnaissance of the lake to
20 determine whether those trout were entering any other
21 stream that was entering the lake or did you just
22 isolate your observations to No Name Creek?

23 A No. I personally have never went out on the lake.
24 We send our team. We have biologists that we send
25 out there and our game wardens to take spawn and to

1 keep track of the fish with the assistance and the
2 advice of Dr. Cook. There is another -- there is
3 only one other real creek that goes into Omak Lake,
4 and that is at the southern-most tip of Omak Lake,
5 and it has a big sandbar that is -- would have to
6 be cleared away or a channel made through it for
7 the fish to get up. I have swam down there, that
8 is why I know that area, but --

9 Q Does that Creek have a name; do you know?

10 A Not that I'm aware of.

11 Q Is it fair to say that -- did the Business Council
12 determine what stream the Lahonton trout should be
13 encouraged to spawn in?

14 A No, sir. We didn't know how to encourage them.

15 Q But developments were conducted, were they not,
16 at the mouth of No Name Creek so as to help the fish
17 to spawn and move up the creek?

18 A Well, they were going there. That is where they were
19 being attracted to, for some reason, and I don't know
20 why, and being as they were going there, it was with
21 advice from Mr. Cook that that be developed so that
22 they could spawn there.

23 Q Now, when did the St. Mary's Mission property come
24 into the Tribe's hands?

25 A I believe it was in '73.

1 Q And was that a purchase or a gift, or how was that --
2 how was that done?
3 A If I remember right, it was a gift deed.
4 Q And was that from the Pioneer Educational Association,
5 which, in fact, was an agency of the Society of Jesus?
6 A I don't know the correct title. I have always just
7 referred to it as the Jesuit School, whatever their
8 correct title is.
9 Q Is it your understanding that the Jesuit Order deeded
10 this property over to the Tribe as a gift?
11 A Yes, it wasn't that easy to do. They had to get
12 approval from Rome, as a matter of fact, to have it
13 deeded over to us.
14 Q And I assume they obtained that approval; correct?
15 A Yes.
16 Q So there were no purchase funds involved?
17 A Not that I'm aware of.
18 Q Now, on the development of the irrigation system, did
19 you have to -- have you kept books on that, Mr.
20 Tonasket, or has the Tribal Council done that?
21 A We have got books. I haven't kept books on it, but
22 we do have books.
23 Q But the Business Council has had to keep an accounting,
24 as you testified.
25 A Our accounting department has -- has to keep an

1 account for Federal audits.

2 Q Do you have any knowledge of, in general terms, of
3 the relative contributions into the account used to
4 develop the irrigation system of the Federal Government,
5 the Department of Interior, the Tribal Business
6 Council itself, various other organizations?

7 A I don't have any figures.

8 Q Do you have any --

9 A It's only between the Federal Government, from the
10 Federal Government, the Bureau of Indian Affairs,
11 and the Tribe.

12 Q Those would really be the only two sources of funds?

13 A Yes.

14 Q Do you have any general idea of which one gives more
15 money, or which one has given more money for the
16 development of that system?

17 A The Bureau --

18 MR. VEEDER: Objection, Your Honor. This
19 goes far beyond the records at issue.

20 THE COURT: Sustained. I don't think there
21 is any relevancy to it.

22 Q (By Mr. Mack) Well, Mr. Tonasket, let me ask you
23 this: you stated that when you had gone to
24 Washington, D.C. to discuss the economic feasibility
25 of your program that you spoke to various people; is

1 that correct?

2 A Yes, sir.

3 Q And who did you meet with?

4 A I met with -- at the time it was Morrie Thompson,
5 who is the Commissioner of Indian Affairs, Mr.
6 Phil Corke, who is here in the courtroom, Mr. Kent
7 Frizzell, who is a Solicitor for the Department of
8 Interior.

9 Q And is it correct that your testimony was that the
10 plan that was presented to them was, in their opinion,
11 not economically feasible as presently drawn up,
12 and that certain modifications had to be made?

13 MR. VEEDER: Objection, Your Honor. That
14 is not a correct statement. He didn't say that.

15 THE COURT: Rephrase the question.

16 MR. VEEDER: He says presently.

17 THE COURT: He did testify on this matter,
18 but I don't think you correctly stated what he
19 previously stated.

20 MR. MACK: I'm sorry, Your Honor.

21 Q Were you informed that the plan as presented to them
22 was not economically feasible; is that correct?

23 A When we first went to ask for money to develop the
24 Paschal Sherman, it was not economically feasible.
25 It was too small.

1 Q Based on that, you increased the acreage; isn't that
2 correct, for the plan?
3 A Yes.
4 Q And was that on their recommendation?
5 A I couldn't say it would be on their recommendation.
6 It was -- after you once know what their -- what
7 their problem is, then you figure out your alternatives,
8 and the alternative was to get more land in production
9 to make it more economically feasible which we did.
10 MR. MACK: I have some more questions,
11 Your Honor.
12 THE COURT: Well, if you are going to be
13 much longer, we will take the morning recess at this
14 time.
15 MR. MACK: Okay.
16 THE COURT: Court will be in recess for
17 fifteen minutes.
18 THE CLERK OF THE COURT: All rise. Court
19 is now recessed for fifteen minutes.
20 (Morning recess is taken.)
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1 THE CLERK OF THE COURT: This Court is
2 reconvened following recess.

3 THE COURT: You may continue.

4 MR. MACK: Thank you, Your Honor.

5
6 CROSS-EXAMINATION CONTINUED

7 BY MR. MACK:

8 Q Mr. Tonasket, to continue where we left off, did you
9 understand the reasons given by the Federal officials
10 for the economic unfeasibility of the plan that you
11 originally presented to them?

12 A I understand what economically unfeasible means.

13 Q Did they give you any reasons for coming to that
14 determination?

15 A Just the size of the property at that time and the
16 volume of the crop that could be taken off.

17 Q Did they give you any -- the criteria they used,
18 if there were any criteria other than those, and
19 as to --

20 A No, sir. They never give them to me.

21 Q Did they give them to anyone in the Tribal Council?

22 A Not that I'm aware of.

23 Q And did they determine later that the later plan of --
24 the development plan of the Tribal Council was an
25 economically feasible one?

1 A I would have to presume so because they give us the
2 money.
3 Q And that presumption is based on the funding from
4 the Bureau?
5 A Yes.
6 Q Was the sole difference in the later plan from the
7 original plan the amount of acreage that you were
8 going to put under irrigation or were there other
9 differences?
10 A Acreage. I think that was the main, the main
11 question, how much could we put under agriculture.
12 Q When did your development, your irrigation development
13 in the No Name Creek Valley begin?
14 A When did the development begin?
15 Q Yes.
16 A Oh, we started operating this summer. Very bad at
17 dates.
18 Q Well, just generally, if you can remember.
19 A Last fall -- no, not this fall, but the fall before
20 last.
21 Q Do you have any idea of the cost of that development
22 to date?
23 A No, I don't have those figures. We are going to have
24 to provide the figures to you.
25 Q Do you know, would Mr. Corke have those figures, do

1 you know or would you know?

2 A I'm pretty sure that Mr. Corke would have those
3 figures. He's the main person.

4 Q He knows that better than you?

5 A He knows where the money came from back in Washington,
6 yes.

7 Q Okay. Now, when the Tribe received the property of
8 St. Mary's Mission, was it your understanding that
9 the Tribe was receiving the property rights to that
10 property, in all property rights, or did you have
11 that understanding?

12 MR. VEEDER: That calls for a legal
13 conclusion, Your Honor.

14 THE COURT: Sustained.

15 Q (By Mr. Mack) Did you have any notion of what you
16 are receiving in the conveyance of the property from
17 St. Mary's Mission?

18 A My feelings, we received the property to put the
19 school on there, to build a school on, and that is,
20 I never thought of it any deeper than that.

21 Q And the Business Council has used that property for
22 school purposes; isn't that correct? Since receiving
23 it.

24 A After we received it, we had it chartered and then
25 the school board operates it, not the Tribe -- not

1 the Tribal Council.

2 Q And the purpose -- isn't it true that the purpose for
3 which that school is being operated by the school
4 board includes agricultural purposes for educational
5 benefits for the students at the school?

6 A I think you would have to talk to the school board
7 about what their purposes are.

8 Q You don't know that?

9 A From my talking to the chairman of the school board,
10 it's in their projected plans is to expand into that
11 for vocational-type training. But the original intent
12 was to try to make themselves more economically self-
13 sufficient.

14 Q When the irrigation project was begun, was there
15 anyone designated by the Business Council to have
16 overall management and control or to be overall
17 responsible for that project?

18 A No one person. In a sense, I was more or less
19 assigned to kind of coordinate, to make sure that
20 people carried out what they were supposed to be
21 doing. If there was a bog-down on getting contracts
22 signed, I was supposed to follow up on that. If
23 they were having troubles in receiving parts, pipe,
24 sprinklers and so on, I was supposed to be aware of
25 that, so we do keep the whole movement going and then

1 other members of the Council had other responsibilities.

2 Q Did the people who carried out the project, were those
3 Tribal members, and in addition also non-Tribal
4 members? Did you have both working on it?

5 A Yes.

6 Q And did it include some of the consultants that
7 were hired by the Tribe with regard to this litigation
8 and with regard to the developing of the irrigation
9 project?

10 A Yes.

11 MR. VEEDER: Your Honor, may I interpose a
12 statement here.

13 I realize the right of cross-examination, but I
14 was just advised that if we do not wind up by Friday
15 afternoon, this case would be continued until the
16 end of March.

17 THE COURT: You have been correctly advised.

18 MR. VEEDER: And that, of course, is rather
19 disturbing to us, waiting so long to get the case to
20 trial.

21 THE COURT: Counsel, I recognize this, and
22 I warned counsel when this trial was setting that we
23 just had four days for this trial, and I had hoped
24 maybe you would agree on some of these facts that --

25 MR. VEEDER: I tried to, Your Honor.

1 THE COURT: But if you can't, why, I have
2 no choice but to listen to the evidence. So, that
3 is where we are. You may proceed.

4 MR. MACK: Your Honor, I apologize. I
5 don't intend to unnecessarily delay anything, but I
6 will take, I hope in my cross-examination, a percentage
7 of the time that other counsel take in their cross-
8 examination.

9 THE COURT: You may proceed.

10 MR. MACK: Thank you, Your Honor.

11 Q When you stated, Mr. Tonasket, that the value of
12 hay produced was \$21,000 according to an appraisal,
13 who performed that appraisal?

14 A A combination of people. We had -- and I don't know
15 the name of the individual -- but we did bring in
16 somebody to advise us in the alfalfa and then we have
17 a Tribal member by the name of Glenn Whitelaw who is
18 a big rancher and is very knowledgeable in that whole
19 business, and there was that combination that arrived
20 at the figure, and then looking at the price of hay
21 as it was selling at that particular time.

22 Q And you relied on their statements for that statement
23 of yours that the value was \$21,000?

24 A Yes, sir.

25 MR. MACK: Well, I would move, Your Honor,

1 then that the response -- to the question from, I
2 believe it was Mr. Veeder -- with regard to that
3 appraisal value be stricken from the record as hearsay.

4 THE COURT: Nobody has raised the question,
5 but I have to raise it. I'm not sure there is any
6 relevancy to this whatsoever. What difference does
7 it make what the investment is? We are talking about
8 the purpose, the proffered purpose, and I don't --
9 unless somebody can convince me to the contrary, why
10 should I be concerned whether the Tribe has invested
11 \$1,000 or \$100,000 if it's within the proper purposes
12 of reserved water rights?

13 MR. MACK: Your Honor, I would like to
14 speak to that.

15 The question, as far as the State is concerned,
16 one of the questions, is the economic feasibility
17 of certain irrigation. By that, the State understands
18 that it is relevant that in the Arizona v. California
19 decision by the U.S. Supreme Court that the
20 measure of a reserved water right on an Indian
21 reservation was stated in that case to be the
22 practicable irrigable acreage, and it is the State's
23 position in this trial, and in other cases which the
24 State has with regard to other Indian Tribes, that
25 the phrase "practicable irrigable acreage" necessarily

1 includes within it whether the irrigation which is
2 proposed is feasible both with regard to the actual
3 facts, natural facts, such as whether the acreage
4 to which water is to be put is actually irrigable
5 and whether it is actually economically feasible
6 to irrigate it.

7 THE COURT: Well, I recognize what that
8 case held, but we have before us the fact that if
9 the Government agency involved saw fit to grant the
10 funds, they must have thought it was a feasible
11 project. The Tribe has invested its funds. They
12 must have thought it was a feasible project. In
13 fact, the irrigation is going on now. Should this
14 Court attempt now to review and second-guess those
15 decisions? That is the question I'm raising.

16 MR. MACK: Yes, Your Honor, and the State
17 doesn't think that this Court should second-guess
18 the decision of the Department of Interior on funding
19 this sort of project but whether the Department of
20 Interior takes into account the elements which we
21 think are important to determine whether it is
22 feasible to irrigate acreage is something that I
23 don't think is clear and I don't think the Court
24 can take judicial notice of that, that a Federal
25 agency would consider whether its use of funds is

1 efficient or economical. I know of no tests being
2 established in the past that shows that to be the
3 case.

4 THE COURT: Well, you may proceed. I just
5 raised the question.

6 MR. VEEDER: I would like to raise just one
7 point on this, Your Honor.

8 I truly don't know why the State is here to
9 begin with.

10 THE COURT: Well, they're in it.

11 MR. VEEDER: What?

12 THE COURT: They are here, so let's proceed.

13 MR. VEEDER: And I really think they're
14 killing the clock, Your Honor. I want that in the
15 record.

16 MR. PRICE: I take exception to that.

17 THE COURT: Well, that has not been on
18 one side, so go ahead.

19 MR. ROE: Your Honor, a short statement with
20 regard to Mr. Veeder's earlier statement with regard
21 to your time schedule, could it be possible to have
22 about a five minute conference at about 1:30 to
23 discuss the whole situation in this regard? I think
24 that at least we --

25 THE COURT: Fine with me. When we recess

1 for lunch, we will recess until 1:30 and I will meet
2 with counsel about 1:15.

3 MR. ROE: We could then give you a full-
4 fledged view of where we are and where we are coming
5 from and why we are in this case. We are joined as
6 a defendant by the United States.

7 THE COURT: All right. Go ahead.

8 MR. MACK: Thank you, Your Honor.

9 Q Mr. Tonasket, who votes in elections for the members
10 of the Tribal Business Council?

11 A All of our enrolled Tribal members from the age 18
12 on up are eligible to vote.

13 Q And does that include Tribal members who live on
14 the reservation as well as those who live off the
15 reservation?

16 A Yes, sir.

17 MR. VEEDER: I object, Your Honor. I
18 submit this has no relevance whatsoever to the
19 issues presented to Your Honor.

20 THE COURT: Overruled. You may answer.

21 A Yes, sir. We have one of the few tribes that have
22 absentee voting so that off-reservation members
23 can vote.

24 Q Thank you. Now, are you on -- you referred to a
25 water committee that was created pursuant to the

1 Colville water code. Are you on that water committee
2 or have you ever been on that water committee yourself?
3 A No. No, I think you are mistaken. We never had a
4 water committee before the code.
5 Q After the adoption of the code.
6 A After the adoption of the code. No, I'm not on the
7 committee and I have never been on that committee.
8 Q But as chairman you pass on the recommendations of
9 the committee; is that correct?
10 A Yes.
11 Q How many applications have been made for permits to
12 Mr. Passmore to your knowledge under that code?
13 A I would imagine about eight of them or so have come
14 across the desk since I have been the chairman.
15 Q Do you know of any permits that have been granted?
16 A All eight of them have been granted, however many
17 came before my desk have been granted.
18 Q You described an appeals procedure for permits; is
19 that correct?
20 A No, I said that there was an appeal procedure. I
21 never described it.
22 Q Yes, well, is it correct that no appeals have been
23 made of any appeal application?
24 A That is correct.
25 Q Are you obliged to apply in your duties in passing

1 and in reviewing the recommendations of the water
2 committee, are you obliged to use the Colville water
3 code?
4 A Yes.
5 Q And you interpret it, do you not, in reviewing the
6 recommendations of the water committee?
7 A I would if I had a cause to.
8 Q Well, haven't you had cause with regard to the eight
9 applications for permits to apply the water code?
10 A The only reason that I would see needing to go through
11 the code every time a permit came across my desk is
12 if there was a question raised by either Mr. Passmore
13 or by the committee and they wanted me to make a
14 determination on that. As of yet there has not been
15 any question. At least since I have been chairman
16 they have been recommended for approval as they have
17 been requested.
18 Q And in such a case, as you have described, you would
19 be obliged in your own mind, would you not, to apply
20 the provisions of the water code?
21 A Yes.
22 Q And, Mr. Tonasket, does the code distinguish -- I
23 withdraw that.
24 Does the code, or does the water committee -- or
25 let me just state it this way: Does the Tribe through

1 its code acknowledge any existing water rights on
2 the Colville Indian Reservation other than those
3 applied for through applications, or permits pursuant
4 to the code?

5 A If I understand what you are asking me, the question --
6 or the answer, would be no. If you are asking me do
7 we recognize the State permits, the answer is no.

8 Q Are any permits or any rights recognized other than
9 State permits or rights, as pre-existing the code?

10 A The answer is no.

11 Q The code begins at base year zero, as scientists would
12 say, I suppose; is that correct? Everything starts
13 from there.

14 A If that's what the scientists say, yes.

15 Q Well, everything starts from there; isn't that
16 correct?

17 A Yes. If I might explain one of the reasons, and I
18 will repeat, because there were no Secretarial
19 regulations, no Federal regulations or permits being
20 issued, so nothing, just those that we were made
21 familiar with when the State had issued permits.

22 Q Is it your understanding that all of the water on
23 the reservation now excepting that assigned to the
24 eight permits granted, is presently in existence to
25 be allotted pursuant to permit applications under the

1 code? Is it available to future permit applicants?

2 A Yes, if there is water available, and not conflict

3 over the water. I would have to point out that that

4 is my personal opinion.

5 Q Yes.

6 A And then we have to take each application as it comes

7 over our, through the process.

8 If it would help you to understand the philosophy

9 that went into the code, maybe it would answer some

10 of your questions.

11 Q Well, we will see about that.

12 A Okay. Has the Business Council at the present time

13 or has it at any time had any other plans to acquire

14 any other lands through lease or purchase in the No

15 Name Creek Valley as part of the irrigation project?

16 A Not that I'm aware of.

17 Q Are there any other irrigation projects on the

18 reservation other than the No Name Creek one, at

19 the present time?

20 A Irrigation projects?

21 Q Conducted by the Business Council?

22 A I don't know if you would classify it as a project

23 or not. We bought a ranch down by the Columbia

24 River, Lasammies (phonetic), -- and I don't know

25 how to spell it -- which has alfalfa fields on it and

1 irrigation equipment was included in the sale and
2 we have operated that, and selling hay for that,
3 from that, you know, that is Tribal. Now, that is
4 a little different than the Paschal Sherman, of
5 course.

6 Q Do you know, and in general terms, the percentage of
7 acreage in the Colville Indian Reservation that is
8 under Indian ownership and under non-Indian ownership?

9 A I could only give you a general --

10 Q Could you do that.

11 A Approximately, realizing that it changes quite a
12 bit depending on how big the farms sell out,
13 approximately one million acres of it is Indian land
14 and three hundred thousand is in deeded status. Now,
15 those are general figures.

16 Q And when you say Indian land, are you including land
17 owned by the Tribal Business Council as well as land
18 owned by individual Indians in the one million figure?

19 A I have to be very clear, not owned by the Tribal
20 Council, but owned by the Tribe in general.

21 Q Okay. And does that include allotted land and land
22 that is not in allotment status?

23 A Yes, I would have to classify it as that. Maybe
24 one million acres in trust status where the title
25 is held in trust by the United States for the Tribe,

1 and approximately three hundred thousand in fee.
2 Q Is it -- to your knowledge -- I'm just -- I think
3 it may be interesting, if not relevant -- does the
4 three hundred thousand acres in fee ownership, is
5 that owned -- to your knowledge, do any Indians own
6 some of that property as well as non-Indians?

7 A Yes, sir. Colville Tribe is one of the biggest
8 property tax payers in the Okanogan County.

9 Q Owning some of that land itself.

10 A They own a lot of that fee land.

11 Q To your knowledge does the Business Council have any
12 plans for irrigation development in Omak Creek in
13 this general vicinity?

14 A In Omak Creek?

15 Q Yes.

16 A No, not that I'm aware of. Most of that is private
17 property. A lot of it is non-Indian.

18 MR. MACK: Your Honor, I don't have any
19 more questions at this time.

20 THE COURT: Mr. Sweeney. I think he --

21 MR. ROE: One moment, please.

22 THE COURT: Excuse me.

23 MR. ROE: Thank you, Your Honor, That is
24 all the State has.

25 THE COURT: Mr. Sweeney.

1 CROSS-EXAMINATION

2 BY MR. SWEENEY:

3 Q Mr. Tonasket, you mentioned that there are about eight
4 applications made to the water committee or to the
5 Tribal Council for water certificate under your water
6 code?

7 A No, I said that that is what I can remember, about,
8 that came since I have been the chairman. I don't
9 know how many there were when Mrs. Covington was
10 chairman or Mr. Auberton was chairman, but since I
11 have been.

12 Q Oh, I see. I misunderstood. I thought that was the
13 total amount of applications.

14 A No, I don't know how many. I think that you can get
15 that information from Mr. Passmore.

16 Q All right. Well, as far as these eight that you do
17 have some knowledge about, were any of those
18 applications by non-Indians for fee lands within
19 the Reservation?

20 A Yes, sir.

21 Q And about how many, if you can remember?

22 A I'd guess maybe half.

23 Q So, about half were applications by non-Indians for
24 a water use on fee-owned lands within the Reservation
25 boundary?

1 A (Nodding yes.)

2 Q And the other half were what?

3 A Tribal members, Indians.

4 Q For trust lands within the Reservation.

5 A (Nodding yes.)

6 MR. SWEENEY: That is all I have.

7 THE COURT: Redirect, Mr. Veeder?

8 MR. VEEDER: No, nothing, Your Honor.

9 THE COURT: Mr. Price, do you have
10 something?

11 MR. PRICE: Your Honor, I would like the
12 opportunity to continue cross-examination based on
13 the evidence, or the exhibits that Mr. Veeder plans
14 to introduce later on, and I believe they are relevant
15 to this witness.

16 MR. VEEDER: I have no objection. He is
17 looking at these, Your Honor.

18 THE COURT: All right. Proceed.

19 MR. PRICE: Thank you. Your Honor, if I
20 might approach the witness with a copy of the
21 document.

22 THE COURT: You may. What exhibit do you
23 have?

24 MR. PRICE: This would be an item from
25 Exhibit, Plaintiff's Exhibit 3/2. It is a --

1 THE CLERK OF THE COURT: It is part of 3/2.

2 THE COURT: Proceed.

3

4 CROSS-EXAMINATION CONTINUED

5 BY MR. PRICE:

6 Q Mr. Tonasket, I have given you a lease document, a
7 copy of a lease document. Does that purport to relate
8 to the leasing by the Tribe of Allotment S-892 (sic)?

9 A Yes, it does.

10 Q And would that be -- looking at Exhibit 1 -- the
11 second green shaded area at the northern end of the
12 map?

13 A Yes, sir.

14 Q And that lease is to run for a period of five years;
15 is that so stated on the front of the lease?

16 A Yes.

17 Q And does it limit the amount of acreage that can be
18 put into cultivation to 45 acres, on the face of
19 the lease?

20 A 45 acres?

21 MR. VEEDER: I think the document speaks for
22 itself, Your Honor. We haven't offered it yet, I
23 was going to offer it.

24 MR. PRICE: If I may approach the witness.

25 THE COURT: Go ahead.

1 A Oh, yes, not to exceed 45 acres cultivated.

2 THE COURT: Well, it does speak for itself,
3 but either I'm going to have to read it or somebody
4 is going to have to tell me what is in it. Do it
5 any way you want.

6 MR. PRICE: Thank you, Your Honor.

7 Q Now, Mr. Tonasket, there are several items attached
8 to that lease and I have indicated one prior to your
9 testifying; did I not?

10 A Yes, sir.

11 Q And that purports to be a resolution by the Colville
12 Confederated Tribes authorizing the entering into
13 this lease agreement; is that correct?

14 A Yes.

15 Q And does not that resolution speak to the importance
16 of this land for land consolidation purposes and
17 fish and wildlife and just strategically having
18 the land?

19 A Yes.

20 Q Does it not specifically purport to say anything
21 about the Paschal Sherman School or anything in
22 connection with the need for obtaining funds in
23 connection with the Paschal Sherman School?

24 A No.

25 Q Now, the document following that resolution, Mr.

1 Tonasket, is that not a document from one of the
2 owners of the allotment purporting to agree to a
3 lease of allotment to the Tribe?
4 A Repeat your question, and then let me --
5 Q Is that not a document by -- there are several
6 attached, all reading the same, signed by the
7 various owners who have interest in the allotment,
8 purporting to agree to the lease of the allotment
9 by the Government to the Tribe.
10 A Yes.
11 Q And would you read the first sentence of that
12 document, please.
13 A Okay. This is a statement of owners of Allotment
14 S-892. It says, "I have been informed that the
15 Tribe wishes to lease Allotment S-892 in order to
16 strengthen their suit against the Waltons for
17 water rights." That is the first sentence.
18 Q Okay. Now, Mr. Tonasket, turning to Exhibit No. 1,
19 if we can again, the map. Is it your understanding
20 that the Tribe considers water necessary and
21 important for the development of the No Name Creek
22 Valley, for whatever purposes you want to put on it?
23 A Yes.
24 Q And do you consider the area shaded in yellow, in
25 between the green shaded areas on the Exhibit No. 1,

1 to be an integral part of that program?

2 A If I understand what you are saying, yes.

3 Q And if the Tribe could acquire that land for the
4 uses to which you want to put it, is there any reason
5 why you wouldn't acquire that land, if it could be
6 made available?

7 MR. VEEDER: I object to that question,
8 Your Honor. This goes far beyond any direct
9 examination. The witness -- out of courtesy to
10 Counsel, I let him pick up this lease. As I said,
11 I haven't even offered it in evidence yet. I think
12 this is going far beyond anything that I directed
13 examination to. I think the whole issue about the
14 development of the valley is beyond the scope of
15 this witness's testimony, and I certainly object to
16 continuing this course.

17 THE COURT: I have to sustain the objection.
18 However, Counsel is going to have a right to call
19 him back.

20 MR. VEEDER: He certainly does.

21 THE COURT: Very good.

22 MR. PRICE: This, again, goes beyond the
23 scope of this document, Your Honor. If Mr. Veeder
24 has objection, I will respect that.

25 Q Mr. Tonasket, do you have an idea of how many Indians

1 and non-Indians reside proportionately within the
2 outer boundaries of the Colville Indian Reservation?
3 A Within the outer boundary?
4 MR. VEEDER: I renew my objection. This
5 has nothing to do --
6 MR. PRICE: Fine. That is all.
7 THE COURT: All right. The question is
8 withdrawn.
9 Mr. Veeder, do you have redirect?
10 MR. VEEDER: I have nothing, Your Honor.
11 THE COURT: You may step down, Mr. Tonasket.
12 Thank you.
13 MR. VEEDER: Call Mr. Virgil Gunn.
14
15 VIRGIL L. GUNN, called as a witness on behalf
16 of Colville Confederated
17 Tribes, being first duly sworn
18 on oath, testified as follows:
19
20 THE CLERK OF THE COURT: Will you please
21 state your full name to the Court.
22 THE WITNESS: Virgil Louis Gunn.
23 . . .
24 . . .
25 . . .

DIRECT EXAMINATION

BY MR. VEEDER:

Q Would you state your age, Mr. Gunn.

A 35 years of age.

Q And where do you live, sir?

A Omak, East Omak, Washington.

Q And how long have you lived on the Colville Indian Reservation?

A All my life.

Q Just briefly, would you review your educational background?

A Upon graduating from Omak High School in 1960, I entered the Service for two years, U.S. Army; was trained as a surgical technician; and then upon completion of Army service, I attended Wenatchee Valley College for two years; transferred to Eastern Washington University where I got my Bachelor of Arts degree in psychology.

Q Now, would you state the position you hold today in the governing body of the Colville Indian Tribe?

A I'm a member of the Colville Business Council.

Q And what is your particular responsibility in regard to the Paschal Sherman Indian School, please.

A I'm also a member of the Colville Educational Development Board. I am chairman of that particular

1 school board, also.

2 Q And would you state into the record the relationship
3 between the school board and the Colville Tribal
4 Council and the reasons -- the organizational setup
5 that you are about to describe. Would you move right
6 along on that.

7 A The relationship of the school board with the Tribe.
8 Well, first of all, the Colville Educational
9 Development Board is chartered by the Tribe which
10 gives it autonomy from the Business Council, and
11 because of that the school board is enabled to
12 operate under the auspices of the Colville Educational
13 Development Board without interference from the
14 Business Council.

15 Q The objective, then, was to make this an independent
16 entity; right?

17 A That is correct.

18 Q I offer to you the exhibit, Colville Exhibit marked
19 for identification No. 2/15, and ask you to state
20 into the record what that exhibit represents.

21 A Yes. The top form is a resolution which gave the
22 authority to charter the school to the Colville
23 Educational Development Board, and attached part of
24 the constitution and by-laws of the school board.

25 Q Is that the constitution under which it is now

1 operated, today, the school?

2 A Yes, with some modifications between 1974 and the
3 present with modifications, yes.

4 Q Now, would you proceed to state into the record the
5 number of students that are attending this school,
6 please.

7 A Currently, 154 students are attending Paschal Sherman
8 School.

9 Q And is that a boarding school? How does it operate?

10 A It's primarily a boarding school. Currently,
11 approximately, 130 are boarders and as high as 30
12 students are day students. In other words, they
13 commute back and forth from Omak and Paschal Sherman
14 School which is six miles away.

15 Q Why is the Colville Business Council and Colville
16 Confederated Tribes pursuing the idea of Indian
17 education on the reservation? Would you state that
18 into the record.

19 A Yes. The Business Council felt that education is
20 a priority and they felt that since the Jesuits
21 who at the time asked the Business Council to
22 consider taking it over because of financial
23 difficulties, the Tribe responded, again, because
24 they feel an education is a priority, and especially
25 the kids that attend Paschal Sherman School.

1 Q And have you made any analysis as to the relation
2 between continuing education on and off the
3 Reservation, Mr. Gunn?

4 MR. PRICE: Your Honor, -- Mr. Gunn,
5 excuse me -- this may be interesting. I do not feel
6 it is relevant in terms of whether or not education
7 may or may not help in terms of the issue before
8 this Court.

9 MR. VEEDER: May I respond to that, Your
10 Honor.

11 THE COURT: You may.

12 MR. VEEDER: The importance of this Paschal
13 Sherman Indian School, as we have attempted to point
14 out here, is for the objective of securing education
15 for the Indians on the Reservation. Mr. Gunn would
16 testify, if permitted to do so, in regard to the
17 advantages that stem from the children having their
18 own education on the Reservation.

19 THE COURT: I am going to sustain the
20 objection, not because I don't agree with that, but
21 because I don't think it has any relevance to the
22 problem that faces the Court. The Tribe has made
23 the decision to establish a school and I think that
24 is their decision.

25 MR. VEEDER: That is good enough for me,

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Your Honor.

THE COURT: Go ahead.

Q (By Mr. Veeder) Would you briefly state into the record, then, your responsibilities in connection with the Paschal Sherman agricultural program. Have you had responsibility in connection with that, the Colville irrigation projects, and so forth?

A Yes, the administration, the school administration, primarily has that responsibility in consultation with the school board. Since the inception and development of the Tribal allotments, the Colville Education Agricultural Program has been developed and currently operating by some of our staff at the school.

Q Have you projected any plans in regard to increasing the curriculum in the school in connection with this development program?

A Yes, we do. The school board has discussed this and since we are currently developing Paschal Sherman School, we are attempting to secure funds to construct new facilities at the school which would accommodate and expand the vocational areas and, more precisely, agriculture so that the students at Paschal Sherman would have -- would be prepared to -- in the areas of agriculture, whether it's raising alfalfa or

1 other crops on the reservation.

2 MR. VEEDER: I will offer in evidence --

3 THE COURT: Exhibit 2-15.

4 MR. VEEDER: 2-15.

5 THE COURT: 2-15 has been offered.

6 MR. SWEENEY: The Government has no

7 objection.

8 MISS ECKERT: The State has no objection.

9 MR. VEEDER: That is all the questions.

10 MR. PRICE: May I inquire briefly, Your

11 Honor.

12 THE COURT: You may.

13 MR. PRICE: Mr. Gunn, does the resolution,

14 Plaintiff's Exhibit No. 2-15, any portion in there

15 relate to the irrigation project that we have been

16 discussing here in Court?

17 THE WITNESS: Not to my knowledge, no.

18 MR. PRICE: I have no objection, Your Honor.

19 MR. VEEDER: We make the offer, Your Honor.

20 THE COURT: Tribes' Exhibit 2-15 is admitted.

21 (Colville Exhibit No. 2-15

22 admitted.)

23 THE COURT: Gentlemen, there is no use

24 starting cross-examination. We have about three

25 minutes to go, so we will recess the case until 1:30,

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but I will meet with counsel in Chambers at 1:15,
please.

Court will be at recess.

THE CLERK OF THE COURT: All rise. Court
is now recessed until 1:15.

(Luncheon recess is taken.)

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Afternoon Session

February 8, 1978 1:30 P.M.

THE CLERK OF THE COURT: Court is reconvened following recess.

THE COURT: Okay. Have you finished direct, Mr. Veeder?

MR. VEEDER: Yes, I have, Your Honor.

THE COURT: All right. Mr. Price, do you have cross?

MR. PRICE: Briefly, Your Honor.
Good afternoon, Mr. Gunn.

THE WITNESS: Good afternoon.

CROSS-EXAMINATION

BY MR. PRICE:

Q In connection with the operation of the Paschal Sherman School this past year, was a budget devised in terms of operating the school?

A Yes.

Q And in terms of meeting that budget, were funds obtained to meet that budget?

A Yes.

Q And where did those funds come from?

A Bureau of Indian Affairs, Colville Tribe and several federal programs like Title IV, Johnson-O'Malley and

1 Title I, which are federal grant monies.

2 Q And did those funds meet the budget for it?

3 A Yes, we built our needs around the amount of money
4 that was made available to us, yes. It didn't really
5 meet the needs that we wanted, but it carried us
6 through the school year.

7 Q Okay. How many cattle are being cared for in
8 connection with the operation of the school?

9 A We currently have 81. We sold -- we slaughtered 15,
10 I believe, last month for the school, for the diet
11 for the children.

12 Q How many were carried through the winter up until
13 just recently?

14 A Approximately 100.

15 Q In connection with the hay that was obtained from
16 the property of No Name Creek Valley, was that used
17 in connection with the cattle herd at the school?

18 A Yes, it was, some of the hay was, yes.

19 Q And was all of that hay needed, or did you have excess
20 that could be sold?

21 A We had excess.

22 Q Mr. Walton attempted to buy some of that hay; did he
23 not?

24 A Yes. Yes, he did.

25 Q And he was refused to purchase; is that correct?

1 A Yes, but if I might explain the reason.

2 Q All right, that is fine. Go ahead.

3 A Okay. Last year we were in the middle of a drought
4 and Colville Business Council attempted to apply for
5 drought relief funds for Tribal members on the
6 Colville Reservation and we talked with Glen Whitelaw
7 who is chairman of the Land and Forestry Committee,
8 and ask him if we should hold off and not sell the
9 excess hay until, you know, until we find out if
10 the Tribe was going to get drought relief funds,
11 so the hay was not sold for a period of time, and
12 when Mr. Walton requested to purchase hay, that is
13 a primary reason why he was turned down, because
14 we were waiting to secure drought relief funds from
15 the Bureau of Indian Affairs.

16 Q I'll just make this my last question in that regard.
17 Were you not selling hay at the same time to others?

18 A Yes, to Tribal members.

19 Q I see. How long have you been associated with the
20 Paschal Sherman School, or are you? I'm not sure I
21 have your role.

22 A Yes, I'm on the school board.

23 Q Is the school separate from the Tribe?

24 A Yes, it is. It is a chartered entity.

25 Q Chartered by what, the Federal Government?

1 A By the Colville Tribe.

2 Q The Colville Tribe. What role did you play, or did
3 you have, or did the school play in terms of the
4 irrigation project that has been conducted by the
5 Tribe in No Name Creek Valley for the last two years?

6 A When the irrigation project was being planned,
7 approximately two years ago, the superintendent of
8 the school then, Alfred Langon, who is no longer in
9 that role, played the major role in working with
10 the Tribal Land and Forestry Committee, Mr. Whitelaw
11 and other officials to set up the agricultural
12 project. The role that the Board had was a monthly
13 school board meeting. Mr. Langon would bring
14 recommendations to the Board in conjunction with
15 resolutions which were needed to progress on
16 approving documents or to develop the irrigation
17 project. That is the role the Board had.

18 Q Is the number of cattle, the number of 100, is that
19 about the approximate maximum amount that you can
20 run in connection with the school or is it a
21 different amount, different number?

22 A We have built up to approximately 100 now. That,
23 at this time, is adequate beef to supply the needs
24 of the school.

25 Q All right, and --

1 A At this time.

2 Q Excuse me. And as I understand it, the amount of
3 alfalfa or hay that you were able to -- or remove
4 from the land was sufficient to sustain that herd
5 in connection with the operation.

6 A Yes.

7 MR. PRICE: I have no further questions.
8 Thank you, Mr. Gunn.
9 Thank you, Your Honor.

10 MR. VEEDER: Your Honor, would I be permitted
11 to excuse Mr. Mel Tonasket? He has a doctor's
12 appointment. He has to leave. Does anybody want
13 to use him today?

14 THE COURT: Someone requested that he remain,
15 but maybe not for today.

16 MR. PRICE: That is correct, Your Honor.
17 I anticipated recalling him as part of our case.

18 THE COURT: But not today?

19 MR. PRICE: Not today.

20 THE COURT: He may be excused for the rest
21 of the day.

22 MR. VEEDER: Thank you, Your Honor.

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CROSS-EXAMINATION

BY MISS ECKERT:

Q Mr. Gunn, I just have one question.

Is there any official connection between the
Paschal Sherman School and the Lahonton fish project?

A No.

Q Okay. Thank you.

THE COURT: Mr. Sweeney?

MR. SWEENEY: No questions, Your Honor.

THE COURT: Any redirect?

MR. VEEDER: No, Your Honor.

THE COURT: You may step down, Mr. Gunn.

Thank you.

MR. VEEDER: Call Lucy Covington, please.

LUCY F. COVINGTON, called on behalf of Colville
Confederated Tribes, being
first duly sworn on oath,
testified as follows:

THE CLERK OF THE COURT: Would you please
state your full name to the Court.

THE WITNESS: Yes. Lucy Freeland
Covington.

THE CLERK OF THE COURT: Thank you.

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DIRECT EXAMINATION

BY MR. VEEDER:

Q Mrs. Covington, would you state into the record as to where you were born and where you resided most of your life.

A I was born in Nespelem, Washington, on the Chief Moses property, and I still live there. When? Did you say when?

Q Yes, I did.

A Well, I guess I will have to say I was born in 1910, 67 years ago.

Q Now, you said the Chief Moses property. Are you a descendant of Chief Moses?

A My great-grandfather.

Q He was your great-grandfather?

A Yes.

Q Now, would you state into the record, Mrs. Covington, your relationship with the governing body of the Colville Indian Tribe, the Confederated Tribe of the Colville Indians, and what is your present capacity on that governing board?

A Well, I'm on the Tribal Council. I have been on the Tribal Council probably 20 years and at the present time I'm the chairman of the Legislative Committee and I'm a member of the Land and Forestry Committee.

1 I'm also a member of the Ways and Means Committee,
2 and Employment.

3 Q Were you ever the chairperson, Mrs. Covington?

4 A Yes, I was a chairperson in 1976 and '77.

5 Q Would you state into the record your knowledge and
6 experience in regard to what we refer to as the
7 St. Mary's Mission, the No Name Creek area and on
8 down to Omak Lake. What is your first recollection
9 of that area?

10 A My first recollection was being in that church and
11 camping in that area, probably on Corpus Christi.
12 I would say in my very tender years.

13 Q Has you a recollection as to what the country was
14 like in the No Name Creek area during that period
15 down to the 1920's and on down, Mrs. Covington?

16 A It was fairly open. I think there was very few
17 fences. The people that came to the churches camped
18 all along the creeks and in the vicinity of the St.
19 Mary's Mission and down to where the Walton property
20 is now, that's where Mr. Snitkin lived, and I think
21 that is where we spent our time.

22 Q And you were familiar --

23 A What?

24 Q You were familiar with that area, then, for a long
25 time back; is that right?

1 A As a small child.

2 Q Yes.

3 A Very small child.

4 Q And on down.

5 A I'm not that too familiar.

6 Q And on down to today.

7 A Yes, to today.

8 Q Now, would you refer, then, to the character and

9 type of development in that area during these early

10 years when you were down there.

11 A The St. Mary's Mission is on Indian land. It was

12 there when the reservation was developed, and I

13 believe it was an allottee gift or something of

14 that type, to have the St. Mary's Mission as a

15 school, and in those years they had planned on

16 having a college there but it burned down and they

17 had a large collection of artifacts.

18 Q And what about the use of water in No Name Creek,

19 did you make any observation of that during that

20 period?

21 A Well, there was, you know, they didn't have bathhouses

22 in those days. People that camped there generally

23 bathed, and some of them caught some of the small

24 fish that are in there, in the creek.

25 Q But was the condition of the farming in the area at

1 the time, to your recollection?

2 A The farming, I'm -- at that time, I have no direct
3 recollection in my tender years.

4 Q Mrs. Covington, how -- what is your employment now?
5 What do you do?

6 A I'm a rancher and councilperson.

7 Q And what is your experience in regard to the
8 development of water on the Colville Indian Reservation,
9 particularly in regard to No Name Creek?

10 A Well, the development of any individual water is a
11 -- I just sunk a well for myself and irrigated before
12 we had a water code and for the No Name Creek prior
13 to its development, it was just dry land which needed
14 water for development.

15 Q Do you have a recollection as to whether it was ever
16 developed during, when you were young and up in the
17 area; do you have a recollection on that?

18 A Just from when my older brother was going to school
19 there, they had cattle and some kind of a farm.

20 Q At the school.

21 A At the school, yes.

22 Q And have you any recollection in regard to the Walton
23 property during this period? Was there any develop-
24 ment down there?

25 A During what period?

1 Q Well, from the 1920's on, for example.
2 A No.
3 Q There was not?
4 A I don't know.
5 Q Oh, I see.
6 A I don't really -- I know there was something good
7 there, that's about all I can say.
8 Q I see. Were you on the Tribal Council, Business
9 Council when the water code was adopted, Mrs.
10 Covington?
11 A Yes.
12 Q And what were the reasons that you had for -- what
13 was your relationship in regard to that water code?
14 A At that time I was the chairperson of the Planning
15 Committee and had the Water Rights Committee and
16 there was a vacuum in the control of jurisdiction,
17 or of regulating water on the Colville Reservation,
18 and the land belongs to the Colville Reservation,
19 and, naturally, the water belongs to the Colville
20 Reservation. We needed a code to regulate and
21 control and have jurisdiction over the use of water.
22 Q What were your responsibilities in regard to the
23 water code, Mrs. Covington, after its adoption?
24 A Trying to get as much information from expert people
25 to see how it would be useful for our particular

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reservation.

Q Did you have any responsibility in connection with the issuance of permits or anything like that?

A Yes, I have.

Q And would you relate into the record what your responsibilities were in that.

A When I -- at the present time I am on the Land and Forestry Committee. We have to research some of these applicants to see if there is enough water for their request. In the water code, the number one priority is that they have, everybody has domestic water, first. After that, then other matters come in, whatever development that they wish, and that all has to be checked into and if it's an applicant by a non-Indian and if there is an Indian living below that person, then we have to check completely to know that this Tribal member will have sufficient water.

Q Did you have any responsibility in connection with the Paschal Sherman School on which we have had testimony?

A Yes.

Q And what was the responsibility?

A In development, I think, mostly of the water, irrigation.

1 Q And would you relate into the record what you did
2 in connection with the development of the Paschal
3 Sherman irrigation program on the Colville irrigation
4 project.
5 A Well, my first responsibility was to develop a well
6 to see if there was enough water there.
7 Q And was that done?
8 A Yes, it was.
9 Q And would you proceed from there and explain what
10 you, the Colville Business Council, did in that
11 connection.
12 A Then, of course, we had to get enough money and the
13 U.S. Government has a trust responsibility to the
14 Tribe, so we went to them to see them use some of
15 that trust responsibility and to help us in some
16 of the funding.
17 Q And you are a party to all of that development; is
18 that correct?
19 A Yes, I am.
20 MR. VEEDER: I have no further questions.
21 THE COURT: Cross-examination. Mr. Price?
22 MR. PRICE: Good afternoon, Mrs. Covington.
23 . . .
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1 CROSS-EXAMINATION

2 BY MR. PRICE:

3 Q Your responsibility in connection with the Paschal
4 Sherman School, your first responsibility was in
5 connection with the well, sinking a well?

6 A Sinking a well to see if there would be enough water
7 for irrigation.

8 Q When was that, please.

9 A Well, all I can remember, I'm one of the oldtimer
10 Indians and I just know the year I had pneumonia,
11 about three-four years ago. Might have been five,
12 the years pass fast after you're 30.

13 Q Okay, I'm finding that to be true.

14 Were you successful in obtaining a well?

15 A Yes.

16 Q And beyond that, do I take it you don't have any
17 specific information with respect to the irrigation
18 project that is presently underway in terms of how
19 much water is needed or how much hay is needed for
20 cows or how many cows are to be run at the school,
21 or that sort of thing; is that correct?

22 A I don't have the count of how much is needed. It
23 was needed very badly when we started, Mr. Price,
24 because Paschal Sherman had so many head of cattle
25 they had to buy hay for and so we had to supply hay

1 otherwise they just couldn't afford buying hay. They
2 were in need of funds.

3 Q Are you in agreement with Mr. Gunn that you were able
4 to obtain sufficient hay this past year for the cattle
5 being run at the school?

6 A Yes.

7 Q No further questions, thank you.

8 MR. PRICE: Thank you, Your Honor.

9 THE COURT: Does the State have cross-
10 examination?

11 MR. MACK: Yes, Your Honor.

12 THE COURT: Mr. Mack.

13

14 CROSS-EXAMINATION

15 BY MR. MACK:

16 Q Mrs. Covington, did you ever attend school at the
17 Mission, St. Mary's?

18 A No, I never did.

19 Q You never did, yourself?

20 A No, I wanted to, but my mother sent my sisters and
21 brothers, but she wouldn't send me. I was a good
22 dishwasher.

23 Q When you said that there were Indian's encampments
24 in the area of the school of No Name Creek, near
25 Corpus Christi, was that normally some time in the

1 late spring or early summer that feast occurred?

2 A That's probably June, but that happened, that could
3 happen every Sunday. There was people coming there
4 every Sunday for church.

5 Q And that was for what years, from 1920 -- ?

6 A From my recollection until they got cars, so
7 transportation was easy. Everything was by buggy
8 in those days.

9 Q And that was a tradition, a tribal tradition?

10 A Absolutely.

11 Q Can you, in your memory -- first of all, are you aware
12 of the Peters' property which is generally the property
13 where the spring which is the source of No Name Creek,
14 the immediate source, arises. Are you familiar with
15 that property?

16 A Yes, I am.

17 Q To your recollection, can you recall any farming
18 conducted north of that property toward the school?

19 A I guess you could say as a passing memory, you know,
20 you could see that something was done there years
21 ago, but I can't tell you on the certain days I
22 remember this and that, no, I couldn't tell you that,
23 but there was something there, yes.

24 Q There was some farming in that property; wasn't there?

25 A Yes, I don't know whether it was the Peters, but the

1 one --

2 Q North of that?

3 A Yes.

4 Q And to your knowledge was that done by the St. Mary's

5 Mission?

6 A Yes.

7 Q Do you know or have any idea where water was obtained

8 for that farming? You don't have any recollection of

9 that?

10 A No.

11 Q Going back as far as you can recollect, were there

12 any Indians who permanently resided in the No Name

13 Creek Valley, and if you know the dates, give them.

14 I'm thinking not only of temporary encampments, but

15 any permanent residence?

16 A Yes, my mother's godmother, Mrs. Timentwa. I just

17 can't think of his -- he had an Indian name. She

18 called him Clane Paul. He lived there and they had

19 a garden and they had a little orchard, I think.

20 Q Where in the valley was that; do you know?

21 A That was below the Waltons' place, as I recall. I

22 think it's on the left-hand side of the road going

23 toward Omak Lake.

24 Q Left-hand side going toward the lake?

25 A Yes.

1 Q Any other permanent residents, just in your memory?

2 A The residents that I mentioned, the Snitkins.

3 Snitkin's wife was my godmother too. They had a
4 house there.

5 Q And that was on the Walton property?

6 A I believe that is where it was, yes.

7 Q Let me ask you this: you referred to the creation
8 of the Tribal Water Code and the fact that it was
9 felt by some, at least, that there was a vacuum,
10 that was the word you used, on the reservation which
11 necessitated such a code; is that correct?

12 A Yes, I used that word I suppose because, I guess you
13 know, the Bureau of Indian Affairs is always referred
14 to as being a trustee and when they don't handle
15 your affairs like they should and you are the
16 landowner and you are on the Business Council,
17 responsible for seeing that certain matters are
18 handled the way they should be, and if you own it,
19 why should somebody else come and start claiming
20 use of water or any part of the land, and so forth.

21 Q You know much more about that than I do, but what
22 I really want to find out is, weren't you aware for
23 a number of years that the State of Washington was
24 granting permits and certificates to the use of
25 water to non-Indians, and possibly to Indians, within,

1 residing within the exterior boundaries of the
2 Reservation?

3 A Yes, we were. That is why we started, decided to
4 exercise our authority.

5 Q And how long were you aware of that?

6 A I can't say.

7 Q That goes back quite a few years; doesn't it?

8 A A number of years, yes.

9 Q Now, are you -- do you have any knowledge or
10 recollection of any Indian settlements in the
11 vicinity of Omak Lake other than those directly
12 north on the No Name Creek?

13 A In Omak Lake?

14 Q Yes, around there.

15 A Of recent years, but not -- .

16 Q How about historically?

17 A When?

18 Q How about going back farther. Were there any
19 settlements, were there any Indians, for example,
20 permanently residing on what has been called Karter
21 Creek which runs into Omak Lake from the south?

22 A Indian people respected Omak Lake in a different
23 manner. They felt that there was a huge monster there
24 that you had to respect because if you didn't respect
25 that monster there, that wish or death or something

1 might come upon you, so Indians looked upon Omak
2 Lake with great respect -- prior to education, I
3 guess, the monster never got us.

4 Q When you say with great respect, does that mean that
5 to your knowledge, to your understanding, that they
6 stayed away from the Lake?

7 A Yes, well, they can go by it, but they didn't --

8 Q They didn't reside too close to it?

9 A Right.

10 Q Do you know of any permanent residents on Karter
11 Creek, to the south?

12 A I don't believe so. Not on the lake.

13 Q Now, regarding the well that was put in at the
14 school, that was for irrigation purposes; right?

15 A At the school?

16 Q The one that you participated in, that you testified.

17 A At Peters' place?

18 Q Well, the last thing that I think Mr. Veeder covered
19 was your activities with regarding sinking of a well
20 with regard to the irrigation project.

21 A We sank three wells.

22 Q Okay, and were those, did those have anything to do
23 with the Tribal activity at the Paschal Sherman School?

24 A Yes, to try to help them out and --

25 Q For irrigation.

1 A To raise feed for the cattle.

2 Q Were you --

3 A And supplement their income if there is surplus.

4 Q I'm sorry for interrupting.

5 Were you aware of any other wells at the school,

6 pre-existing?

7 A There was one that went dry and we had to sink a well

8 for them. I think that was near Omak Lake -- I mean

9 Omak Creek.

10 Q And was that for, to your knowledge, was that for

11 the domestic supply of the school?

12 A Yes, for domestic supply.

13 Q For both the teachers and support personnel and also

14 the students?

15 A For everyone, for safe drinking.

16 Q And how close to Omak Creek was that?

17 A I have never seen it.

18 Q Okay. Has the school had to put in any wells for

19 domestic use since the school was transformed from

20 St. Mary's Mission to Paschal Sherman School?

21 A Yes, I believe they did. I don't recall. Just recent,

22 though.

23 Q But you don't know that?

24 A They put it in, but I mean, I just don't remember

25 whether it was last year, two years ago or when, but

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they have.

Q But there are also other wells up there that had been used earlier, of course?

A Yes, but they weren't safe for drinking.

Q The wells had deteriorated somehow?

A Yes. For lack of water table, I guess.

Q Okay. Thank you, Mrs. Covington. I don't have any more questions.

THE COURT: Mr. Sweeney.

MR. SWEENEY: No questions.

THE COURT: Any redirect?

MR. VEEDER: No. No questions.

THE COURT: You may step down, Mrs. Covington, thank you.

MR. VEEDER: Call Mary Ann Sampson, please.

MARY ANN TIMENTWA SAMPSON, called as a witness on behalf of Colville Confederated Tribes, being first duly sworn on oath, testified as follows:

THE CLERK OF THE COURT: Would you please state your full name to the Court.

THE WITNESS: My name is Mary Ann Timentwa

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Sampson.

THE CLERK OF THE COURT: Would you please spell your last name.

THE WITNESS: S-a-m-p-s-o-n.

THE CLERK OF THE COURT: Thank you.

DIRECT EXAMINATION

BY MR. VEEDER:

Q How old are you, Mary Ann?

A I am 57.

Q And have you acquaintance with the area that we refer to as No Name Creek?

A Yes, I've lived on and off of that area all of my life.

Q Now, could you relate to us, and don't be tied up, Mary Ann, you are just going to relate as you see things. You were a child, as I understand it, in the No Name Creek area; right?

A I didn't live up there until about 1926 or '27.

Q How did you go down there? We are referring now --

MR. VEEDER: May I approach the exhibit, Your Honor?

THE COURT: Yes.

Q (By Mr. Veeder) For your orientation, Mrs. Sampson, No Name Creek runs down here. The green areas are

1 what we call 901 and 903.

2 A Yes.

3 Q And would you state into the record your recollection
4 of that area when you, as a child, went down into
5 that area and resided there. Would you, in your own
6 words, relate your experiences there as a child
7 growing up in the 1920's.

8 A We moved there to what is referred to as S-901. That
9 was my grandmother's allotment and it was rented out
10 to, I will say, white people, because that is the way
11 we expressed ourselves in my young childhood, and it
12 was leased out to Mr. Wham. That is the only name
13 I know it under, is Mr. Wham, and he gave my mother
14 permission to move into her mother's house and a few
15 acres. I don't think I could point it out how many
16 acres or what, but we moved up there and he continued
17 farming our meadow and across the creek there is
18 another meadow and then there is two or three plots
19 of alfalfa field and where the house was, there was
20 alfalfa field there and we plowed out some of what
21 he referred to as Johnson grass to put in our garden.

22 Q Now, --

23 A The reason we put in a big garden, because every
24 Sunday we would go to the St. Mary's Mission for
25 church. My folks were very religious. They had a

1 lots to do with building the mission where it is
2 located.

3 Q Is that --

4 A In fact, I think it's located on my grand-uncle's
5 place.

6 Q Now, during this period, was there farming? Now,
7 you referred to S-901. Were you familiar with the
8 farming operations on 901, and how they were
9 conducted?

10 A Yes, at a very early age, when you're an Indian, you
11 have to take a part in it. You did not go to school
12 like white people do. We had to take part in it and
13 that is the best way to learn how to do anything and
14 my responsibilities were to change the irrigation
15 ditches. It wasn't very hard. Sometimes you could
16 do it with your hands, sometimes you could do it
17 with a shovel. Some of it was ditch irrigated and
18 biggest part that I liked was the meadow because
19 that was flood irrigated.

20 Q Now, what was the source of water for the irrigated
21 lands on S-901?

22 A Well, we called it su-wa-ka, but you people call it
23 No Name Creek. That was our main source of
24 irrigation for our domestic use, watering our stock,
25 because they did not like the lake water that well.

1 The only time our horses and our cattle would go to
2 the lake just to wade into the lake, probably to cool
3 their feet off, or I don't know for what purpose they
4 do that.

5 Q But as a matter of fact, then, you -- what was your
6 responsibility in irrigating the lands? You said
7 there was on both sides of the creek -- looking
8 southward, was there irrigated land on the right
9 side of the creek?

10 A Yes, on both sides of the creek, and we could open
11 up what we called little gates there and we had
12 little boards running there because sometimes the
13 creek flowed too fast. We called that place, in
14 Indian, a little falls, and then we had to fix a
15 long board so they would not overflow our flumes,
16 facing south. Our flume didn't run very far, maybe
17 the length of that.

18 Q Of that, now you are looking at the jury box; right
19 here?

20 A Yes.

21 Q Thank you.

22 A Maybe the flume was that long and then the rest was
23 just ditch, dirt ditch, and we had to control that
24 and I was told how to do it. And if I didn't move
25 that board a certain way, too much water would flow

1 in there and it would overflow on the ground and
2 on the left-hand side, that was a longer flume,
3 and --
4 Q And the left --
5 A And that also had to be controlled because some
6 parts of it, it had to be put up way off of the
7 ground and you couldn't run too much water through
8 there. We had to fill it up a little over half
9 full and then it would not break our flumes down.
10 Q But you regulated the water from No Name Creek in
11 that manner; right?
12 A Yes.
13 Q Now, you mentioned that you had alfalfa on the right
14 side of the creek, looking south. Have you a
15 recollection of how many cuttings you got from that
16 alfalfa, Mrs. Sampson?
17 A Yes, we got three cuttings and after that we let it
18 grow and then we would put our horses, or our cattle,
19 because on S-903 was our pasture. Most of it was
20 our pasture, but a little bit of it was put in for
21 orchard and berry, oh, like raspberries, grapes,
22 mostly any kind of a bush berry.
23 Q Now, would you describe the system you utilized in
24 diverting water over to the left-hand side of No
25 Name Creek. I can't use the Indian name, or I would.

1 On the left-hand side of the creek you diverted water
2 and could you describe the ditch and how the water
3 was delivered down through that area, Mrs. Sampson?

4 A Well, right from the falls we had a flume running
5 through there and as you see the road now, that was
6 improved upon and we used to have just a little buggy
7 road and when it got to the edge of our field, it
8 went under the road and we had a ditch running close
9 to the edge of the hill there.

10 Q And --

11 A And we had ditches that separated irrigation. When
12 we first moved there the one closest to the falls,
13 that was in alfalfa, and it run clear around our
14 house and the road used to go right in front of our
15 house and that kind of divided our fields and down
16 below, south of the house, where it was divided off
17 by the road, that was put in Johnson grass, but
18 when we got there, Mr. Wham and his foster son and
19 his son all came down and helped my dad plow up the
20 Johnson grass so we could plant a garden in there
21 because we needed a lot of vegetables. We used to
22 have anywheres from about 50 to 75 people as guests,
23 especially on Christmas and Palm Sunday, Ash Wednesday,
24 Easter, and Corpus Christi and sometimes we would have
25 that many every first Friday because my folks were

1 very good Catholics.

2 Q And during this period, then, you had -- you were
3 living -- could you -- are you familiar enough with
4 this map, Mrs. Sampson, to point out where the house --
5 MR. VEEDER: May I approach the exhibit,
6 Your Honor.

7 A Well, --

8 Q Can you locate yourself here now? Here is 901, the
9 creek runs down here. Here is the left and right
10 side, looking at it. If you can't locate yourself,
11 just say so.

12 A Well, this map is something new to me. I don't have
13 as much schooling as you people, but --

14 Q Here is the upper end of it.

15 A Well, this look so unfamiliar to me.

16 Q All right. You just describe the ditch system, that
17 you operated, and explain how far the ditch system
18 ran along the north edge of the property, Mrs.
19 Sampson. Did it run on down to 903, please.

20 A Yes, it did.

21 Q And did you take water down there to irrigate some
22 of the lands in 903?

23 A Yes.

24 Q And how did you conduct the water down there? What
25 kind of a ditch was it?

1 A Well, if this signifies where the falls are, we --
2 Q Right.
3 A We took it down through a flume and through a dirt
4 ditch all along this.
5 Q You are pointing now to the northern part of the
6 green area?
7 A Yes, and we brought it into my brother's allotment
8 which is S-903. The reason we had to bring it into
9 that allotment, there is a little spring up there,
10 but you can't always rely on it to run all year round,
11 and that was our pasture, and we had to divert the
12 water into that allotment so they would have something
13 to drink. Sometimes the end of the lake, we didn't
14 want our horses to go in there, and that was Tribal
15 land, but in my days when we moved up there, we had
16 a farm agent, what we called, at Omak. He's Omak,
17 and he would come out and if we needed, like maybe
18 we needed to water our horses at the lake, well he
19 would fix papers up and then we could use the Tribal
20 land, and we had quite a bit of Tribal land that they
21 put it down on paper and my mother and dad could use
22 it.
23 Q I see. Now, during this -- and how long did you
24 reside down there, Mrs. Sampson, on 901, and farm
25 any of that?

1 A We moved up there around about 1926 or '27, and we
2 lived there until 1940 and in early 1941 my mother's
3 lease had runned out on where I'm residing now, and
4 she was sick all that winter and she wanted to go
5 back to her own allotment, so we moved back down to
6 Omak. So, I resided from about 1926 to 1941. We
7 moved down to Omak about in February.

8 Q Throughout that period when you were irrigating these
9 lands in 901 which are located, as you pointed out,
10 was there always sufficient water in what we call No
11 Name Creek to irrigate those lands?

12 A Well, I heard one of the other persons testifying as
13 being swamp down toward the lake. Well, that used
14 to be even more swampier than it is now. When I
15 lived up there, you couldn't walk through there
16 because all our irrigation drained into that area.

17 Q Were you ever short of water out of No Name Creek,
18 though?

19 A No, never.

20 Q There was no -- and at the time of your recollection
21 you were never shorted at any time; is that correct?

22 A No. In fact, they used to be two places where the
23 creek runned into the lake at that time.

24 Q I see.

25 A One where it runs in now and one closer to my brother's

1 allotment which is referred to as S-903. In that
2 area it was just swampy because a lot of our drainage
3 went down that way.

4 Q From No Name Creek.

5 A Yes. We didn't have no well, no nothing there, just
6 a creek.

7 MR. VEEDER: I have no further questions.
8 Thank you, Mrs. Sampson.

9 THE COURT: Cross-examination, Mr. Price.

10 MR. PRICE: Thank you, Your Honor.

11

12 CROSS-EXAMINATION

13 BY MR. PRICE:

14 Q Mrs. Timentwa --

15 A Mrs. Sampson.

16 Q Excuse me, I'm sorry.

17 Is Timentwa part of your name?

18 A Maiden name.

19 Q Mrs. Sampson, when you first moved onto the property
20 in 1926 and '27, do I understand that Mr. Wham or
21 some persons named Wham were leasing the property?

22 A Yes, they were.

23 Q And they were leasing it from your mother or father?

24 A My mother, Felicity.

25 Q And do you recall whether or not they were residing on

1 the property that is now owned by the Waltons?

2 A Yes, they were.

3 Q And in addition to leasing your mother's property,
4 they were farming some of their own property; were
5 they not?

6 A Yes, they were.

7 Q And as I understand it, from time to time they did
8 assist you in tilling the land, or farming the land,
9 or in developing the irrigation.

10 A Well, we were neighbors and if they needed help, we
11 went and helped them, and that was the same with Joe
12 Peter. We were neighbors, the three of us, and we
13 helped one another.

14 Q All right.

15 A No charge, no nothing, and we never did tell one
16 another, "Well, I helped you this many times, why
17 can't you do it." That never was brought up.

18 Q And the Whams were non-Indian; is that correct?

19 A Yes.

20 Q Did you ever return to the property after leaving
21 in the early part of 1941?

22 A Yes, my brother lived up there about for a year and
23 he got employment with a construction company and
24 he had to move to Coulee Dam or Electric City. I
25 don't remember where, and then Mr. Moomaw required

1 the Wham property and he wanted to run his Brahman
2 bulls and his rodeo stock, so we leased our two
3 allotments to him for five years.

4 Q All right. Was he able to successfully operate that
5 lease or not?

6 A I -- I don't know whether this is written in the
7 BIA's ruling or not, but my mother used to tell me,
8 "When you inherit my land, you go up and look at the
9 property that you got leased and whoever is leasing
10 it cannot tell you to get off the property. You got
11 rights to go up there and look and see if they
12 develop the land like it states in the lease paper,
13 if they made the improvements, or did they improve
14 something which was not written in there." And I
15 look at that and if they done right by me, I will
16 sign to this same person for any number of years
17 that they want my land. My mother leased to one
18 Fred Perrin where we are living for 20 years.

19 Q What I want to know is whether or not Mr. Moomaw was
20 ever required to give up that lease or leave the land
21 because he wasn't able to successfully farm it, or
22 something.

23 A Well, this is going to kind of get personal, but if
24 you want to hear it, I will tell it to you.

25 Q Well, I don't know what I'm in for, but -- .

1 MR. VEEDER: Neither do I.

2 Q (By Mr. Price) Let me reserve that for just one
3 minute, please.

4 Let me put it this way: Was there any time that
5 you resided on the property that you were not able
6 to get the water that you wanted?

7 A No.

8 Q Okay, and after 1941, did you return to live on the
9 property?

10 A No. We had it leased for five years to Mr. Moomaw
11 and I would go up there once a year. I went up there
12 two years and I found he had Brahman bulls there,
13 and even driving in a car, I got scared of them, so
14 I never did return there.

15 Q Okay. Do you have any interest in that allotment
16 at the present time?

17 A On S-901 I gift deeded that to my oldest son and
18 S-903, I have a third interest in.

19 Q Okay. At the time you resided on the property, was
20 there any electricity coming down the valley to
21 serve either the Joe Peters, the Whams or yourself?

22 A No.

23 Q Do you, of your own personal knowledge, know that it
24 was the Waltons who brought the electricity down to
25 the Wham property, and from there it went on down to

1 the lake?

2 A I always thought it was the Moomaws.

3 Q Okay.

4 A This is my personal opinion.

5 Q In terms of the swampiness of the area below your

6 property, were you familiar with whether or not there

7 were beavers in the area?

8 A Yes, there was, and they talk about fish, I never

9 did fish in No Name Creek because I didn't have the

10 time to do it, but every May or April, what is known

11 to us, and we interpret it into English, they were

12 suckers. They would come out of the lake for about

13 two, three days, day and night. They would just

14 come up the stream, up to the falls, and you could

15 just catch them by hand. They did that on the north

16 end of the lake where we lived, and another place

17 where there is an Indian trail, the spring runoff,

18 and sometimes that creek runs around in April and

19 May and the suckers would come out there and on the

20 south end of the lake which is known as Karter Valley

21 they also came out there at that time.

22 Q All right.

23 A And that was more fun to me than fishing.

24 Q What I was primarily getting at, is, in fact, were

25 there not beaver dams at the end of the north part of

1 Omak Lake that contributed to the swampy area?

2 A When I lived there, I think I roamed too much around
3 there, or the whole family did, there never was,
4 but toward the '40's, in 1939 or 1940, there was a
5 Blackfoot Indian. He didn't have no place to stay
6 and they gave him -- the Mission used to have a boat
7 landing and they had a little log house there where
8 they used to storage their boats and they gave him
9 permission to stay there.

10 Q Okay. Are you familiar, during the time you lived
11 on the property, were there ever any large spring
12 runoffs come down the creek from time to time?

13 A Not enough to damage any of the creek beds or anything
14 like that.

15 Q During the period that you have been familiar with
16 the property or lived on the allotment, did you
17 ever observe whether Omak Creek actually flowed down
18 the valley toward your property?

19 A No.

20 Q Okay. Do you have any idea, approximate idea, of
21 the amount of acreage that might have been irrigated
22 when you lived on the property?

23 MR. VEEDER: I didn't hear that, Mr.
24 Counsel.

25 MR. PRICE: The amount of acreage that

1 might have been irrigated when she was on the
2 property.

3 A I believe what the Tribe is irrigating now, it's a
4 little bit under what we used to irrigate on that
5 property.

6 Q You think you used to irrigate more than that?

7 A On S-901, but on S-903, we always dry cropped that,
8 except for our fruit trees.

9 Q All right. Do you know how many acres the Tribe
10 is irrigating at the present time in S-901?

11 A Well, when I signed the lease, I did glance at it,
12 but mostly all the ones that works in realty, I
13 know real well, so if I ever wanted to know, I could
14 go and ask them. They're always very good to give
15 me that information.

16 Q Well, in trying to get a figure from you, if you
17 can put a figure on it, if you can't --

18 A No, I can't.

19 Q All right. That is all I have, thank you, Mrs.
20 Sampson.

21 MR. PRICE: Thank you, Your Honor.

22 THE COURT: Does the State have cross-
23 examination?

24 MR. MACK: Yes, yes.

25 THE COURT: Mr. Mack.

1 CROSS-EXAMINATION

2 BY MR. MACK:

3 Q Mrs. Sampson, have you observed what the Tribe is
4 irrigating now on S-901, yourself?

5 A Since the Tribe was gonna, I heard that they were
6 interested in leasing it, I went up to that property
7 and walked all over to see how it looked, and I was
8 very sorry to see that it was so run down, and when
9 the Tribe approached me about it and told me what
10 developments they are going to fix on that, I was
11 all for it, because I hate to see a good piece of
12 land going to waste like that was.

13 Q Have you --

14 A No water and they said they would drill wells, and
15 I was for it.

16 Q Have you seen it since it was irrigated by the Tribe
17 last year?

18 A Yes, I have been up there about three times.

19 Q And is that, when you say that there is less irrigated
20 now than there was when you were on the property, is
21 it based on that observation, partly?

22 A Yes. Because facing south on the right-hand side of
23 the creek, they have not irrigated as much land as
24 we have, as we did. Some of it they didn't develop,
25 but yet, I don't know whether they are going to or

1 what, and I was going to take that up with them.
2 I don't have an interest in that, but I thought I
3 would find out.
4 Q That is the west side of the creek?
5 A Yes.
6 Q Now, these fish you referred to as suckers, how big
7 were they when you grabbed them?
8 A Oh, they were anywheres from a foot long, maybe a
9 little longer, but when you went out on the Indian
10 trail, they were much bigger there, but nobody
11 wanted to pack them that far.
12 Q Where's that, the Indian trail?
13 A Well, if you're familiar with that place, it's --
14 let's see, where is the lake.
15 MR. MACK: May I approach?
16 THE COURT: You may help her.
17 A Yes.
18 Q The lake is down here.
19 A Okay. Well, I will have to put on these extra eyes
20 to see. Well, it would be somewheres around in
21 here. When there is a good spring runoff there is
22 a creek there.
23 Q And you are pointing to Section 34; are you not?
24 A Yes.
25

1 Q Were these fish edible?

2 A Yes. For my own use, my mother showed me how to cut
3 them up and dry them and when we used to go root
4 digging, they were very tasty when we boiled them
5 and they would keep for two or three days. When
6 you go out root digging, you don't want to spend
7 a good part of your time cooking, but you've got
8 to eat too.

9 Q You would smoke them also?

10 A We never did dry them that way.

11 Q You never dried them, but you knew how to prepare
12 them and you did prepare them?

13 A Yes.

14 Q Now, you referred to another place at the north end
15 of the lake where the waters from No Name Creek
16 entered it. Do you recall that? There were two
17 places, you said the present channel and then one
18 closer to your brother's property.

19 A Yes.

20 Q All right. Could you show where that is, generally,
21 if I pointed to that, by pointing to that exhibit?

22 A Okay.

23 MR. MACK: May I approach.

24 A I think I can see that. Well, they got that creek
25 part right here. Well, it would be -- well, see,

1 that is my brother's allotment. It would be nearer
2 there. I don't know whether it's right on the line
3 or not. I never did look for the corner sections
4 there so I couldn't say whether it was on my brother's
5 or on the Tribal land.

6 Q But is it fair to say that the other channel was
7 near the present channel, but a little bit to the
8 east?

9 A Yes.

10 Q By the way, could you give the Indian name again,
11 please, of No Name Creek.

12 A Su-wa-ka. That means just "creek."

13 Q If we had a vote on it, I might prefer that to the
14 name that the lawyers have come up with.

15 A Yes, we call that su-wa-ka. Omak Lake, we called
16 that Akut (phonetic). That's Uteruk (phonetic),
17 means salty water.

18 Q Now, this swampy area to the south, the south end
19 of the creek, is it correct that you were never there
20 or had you gone there on occasion?

21 A Well, used to try to walk through there but I would
22 sink in and I was afraid maybe I would go clear in,
23 and I was the only girl and my brothers didn't like
24 to follow me around or anything so I was more or less
25 responsible for myself. One time I had a hard time

1 getting out of where I sunk up almost to my knees
2 and I had a hard time getting out of there, so I
3 never did chance it going from one end to the other
4 end.

5 Q Was it fair to say it was heavily vegetated in there
6 also, undergrowth?

7 A Yes, I think it was, and at the time my aunt, Caroline
8 Sorentz, her and her husband leased it after Moomaws'
9 five years were up, beavers did build a dam and she
10 used to go fishing there the first year they had it,
11 I think, and at that time I think the Tribe was
12 breaking up all the beaver dams and I think they
13 broke that. That was a pretty good sized pond because
14 my aunt gave me some of the fish she got out of there.
15 She had caught more than they could use.

16 Q When you caught these sucker fish by hand, did you
17 do that below the swampy area or was that above the
18 swampy area?

19 A It was all how I felt. If I felt like carrying maybe
20 half a gunnysack of suckers from where it entered the
21 lake, well, I did so. If I didn't, I would go right
22 down to where there is a little bridge now and I
23 could catch it there.

24 Q Could you please show on that -- could you please
25 indicate where that bridge was?

1 A Well --

2 Q If you can.

3 A Well, it's pretty hard to --

4 MR. MACK: May I approach.

5 A -- really show it on there. Does it show the road?

6 Q I haven't the slightest. I think this is the road.

7 A That's the road. Well, see, right here it crosses

8 the creek. I guess this is the creek line. It's

9 almost the same place where we had our wooden bridge.

10 I don't know what kind of a bridge there is now.

11 I just go over it.

12 Q And for the record, you are indicating where the

13 creek crosses the road or the road crosses the creek,

14 whichever, in Section 28, also within S-901.

15 A Yes.

16 Q Now, did you ever attend the mission school?

17 A Yes, I did.

18 Q What years did you attend?

19 A Well, at that time you couldn't attend the mission

20 until you were eight years old because it would

21 cause too much of a hardship. At that time we

22 didn't call them sisters. We called them madams,

23 and so when we moved up the lake, that was the first

24 letter I ever received was from Father Secaldi

25 (phonetic) telling me to report to the Mission that

1 September.

2 Q And was Father De Rouge still around when you were
3 there or had he passed on?

4 A He had passed on way before I went.

5 Q Do you know whether he brought the Order that he
6 called the Madams there or when they first did arrive
7 there?

8 A I believe there is an Omak Club that calls themselves
9 the De Rouge Orthopedic, or something, and they had
10 done research on it and they said he brought six
11 sisters with him.

12 Q And is it true that there were encampments near the
13 mission, especially around the Feast of Corpus Christi?

14 A Well, to tell you about my own experience and
15 experience before my time, the only way that the
16 Indians got most of their education is certain people
17 had knowledge to happenings of different things and
18 when I was a little girl when we would go to the
19 mission we could ask a certain person to tell us
20 about different things, like real life happenings,
21 fairy tales, legends, or what have you, and there
22 must have been encampments long time ago, but my
23 grandmother built a log house which is standing today.

24 Q There were not encampments while you were there?

25 A There was a lot of encampments, but my grandmother,

1 she was a church leader. She learned from Father
2 De Rouge how to pray and it was her responsibility
3 to teach the Wenatchee dialect to people who wanted
4 to pray and other dialects were taught, but I don't
5 know who the ladies were.

6 Q Were --

7 A And there must have been, my grandmother had a house
8 which was a log cabin. Her brother, Snitkin, had
9 a house. It had about four or five rooms in it.
10 Sam George had a house there, Andrew Marcoln, Narcees
11 Brooks, and another man they called him El-uk-miakin
12 and another man, I forget his name, they all had
13 houses, and Pauline Zackerly and her family, Suzanne
14 Matt and her family, and across, Mrs. Freeland's
15 mother had a house there, and the Abrahams, and
16 another old lady they called Lowles. Those were
17 houses and the rest they brought their camps. I
18 don't care if it was Christmas time or what time of
19 the year, you put up your teepee and you stayed there
20 to go to church. In my days when they went to Palm
21 Sunday, we had to stay there the whole week to serve
22 the Holy Week.

23 Q Now, Mrs. Sampson, were there any farming activities
24 conducted by the mission when you were at St. Mary's?

25 A When I went to school there I used to hate to get the

1 detail of milking cows. We had anywhere from 15 to
2 30 to hand milk them, and when you're in a barn
3 milking and when you come into the chapel for church,
4 they can tell when you arrive. And when I first went
5 there we had, oh, maybe about 20 or 30 pigs they
6 raised there, and when school would open up in
7 September, maybe, well, the priests always varied
8 on that and we would slaughter, they had sheep there
9 and we had to raise our own vegetables. We raised
10 mostly like beans, we would pick when they were dry,
11 potatoes, and the way they got their irrigation when
12 I went to school there was from Omak Creek.

13 Q How did they do that?

14 A By flume and ditch.

15 Q Do you know the point that they got the water from
16 Omak Creek?

17 A Right by what was known to me as Mission Falls.
18 That was constructed similar to our irrigation. They
19 took water out both sides of the creek.

20 Q They had pipes running from that to bring the water
21 to the mission?

22 A No pipes, mostly dirt and flume.

23 Q I see. Then that was at the site known as Mission
24 Falls?

25 A Yes, that's where we got the water, some of it. We

1 used to have our spuds in the field. I noticed the
2 Tribe has got a well there and I think they got
3 alfalfa in there or something, that's pretty good
4 sized piece of a land and that used to be our potato
5 field and when we would go to school there certain
6 times we would be dismissed early to go and pick
7 spuds and we had a root cellar there at the mission.
8 We used to put our potatoes in there.

9 Q Do you recall if the mission farmed any land south
10 of the mission toward the Peters' property?

11 A Yes. That is the land I am referring to as our
12 potato patch.

13 Q And that would receive some of the water from Omak
14 Creek?

15 A It was mostly dry cropped. I think the Whams were
16 the ones that told Father Secaldi what kind of
17 potatoes to plant that would be good for dry cropping
18 and he was right. They grew very good.

19 Q Do you happen to know how many acres was farmed up
20 at the mission?

21 MR. VEEDER: I object, Your Honor. I think
22 we have gone far, far afield. I'm delighted with
23 the witness, but we didn't bring any of this in, I
24 think, on direct examination.

25 THE COURT: I think she may answer the

1 acreage.

2 Q (By Mr. Mack) If you know.

3 A Well, the campus now takes up where our orchard used
4 to be and where we used to hold our sheep and our
5 pigs.

6 Q When you say the camp, what do you mean?

7 A The campus.

8 Q Oh, the campus.

9 A The Paschal Sherman campus. They put a lot of new
10 buildings where we used to hold sheep and the pigs.

11 Q But you wouldn't have any -- you don't know the
12 acreage figure; would you?

13 A No, I don't worry about acres.

14 Q And did your family have cattle, as I understand it,
15 on S-901 and S-903?

16 A Well, how far back do you want me to go?

17 Q Well, anytime is fine with me.

18 A Well, this was told to me by the person that tells
19 of our ancestors and he told me, from the mission to
20 Omak Lake, Snitkin and his sisters used to have
21 cattle and right where the Waltons live now and up
22 where there is kind of a rock in the middle of the
23 field there, well, that's where clear around that
24 place they used to feed their cattle there.

25 Q Let me ask you this: When you were on the land in the

1 1940's, did you have any cattle?

2 A Yes, we had cattle.

3 Q And where did they get their water?

4 A From No Name Creek.

5 Q And did they go up to the creek and drink it or was
6 it diverted for them, or both?

7 A Sometimes we had to divert it because of our alfalfa
8 fields and our meadow hay which we had to cut for
9 winter use and we had Tribal lands to make them
10 graze on and on this S-901, going south on my right-
11 hand side that bordered that allotment, there is
12 a lot of Tribal land and we had our horses and our
13 cattle up there and we had to divert some of that
14 through our fence into that Tribal land so our cattle
15 and horses could drink.

16 Q Did they cross the creek back and forth?

17 A No, this is way off of the creek what I am talking
18 about.

19 Q No, but when they went to drink at the creek, for
20 example.

21 A Well, it was just a ditch, what we had to divert
22 from No Name Creek.

23 Q Did they ever go to the creek itself to drink?

24 A Well, we didn't want them to because they had to
25 cross our alfalfa fields or our meadows.

1 Q You wanted to keep them out of there?

2 A Yes, because they can do a lot of damage.

3 MR. MACK: I don't have any more questions,
4 Your Honor.

5 THE COURT: Mr. Sweeney.

6 MR. SWEENEY: Yes, just a couple. I will
7 be brief.

8

9

CROSS-EXAMINATION

10 BY MR. SWEENEY:

11 Q Mrs. Sampson, as I understand it, you first began to
12 reside in the area of No Name Creek in 1926 or 1927.

13 A Yes.

14 Q And at that time you were with your family?

15 A Yes.

16 Q And the land to the north as presently owned by Mr.
17 Walton was owned then by some people by Wham?

18 A Wham.

19 Q And did they irrigate any land on the land owned by
20 the Whams?

21 A Yes, they did.

22 Q And about how much or do you know?

23 A Well, I couldn't say how many acres, but if I was
24 there I could point out all of what they had in
25 alfalfa and the old man Wham, he liked to experiment

1 with different varieties of potatoes and see what
2 would grow good in that particular valley.

3 Q I see. Well, was the amount that the Whams irrigated
4 -- and they irrigated, I suppose, in a manner similar
5 to what your family irrigated the land down below.

6 A Yes, and they also got their domestic water from the
7 creek by gas pump.

8 Q Was the land that was irrigated, like by the Whams,
9 was that roughly similar to the lands that are
10 irrigated by the Waltons now or do you know?

11 A Well, I really haven't look up the Walton's place
12 that much because the roads are changed from where
13 they used to be when I lived up there.

14 Q You mentioned that in the late 30's a beaver -- there
15 was a beaver pond?

16 A Well, that was when my aunt was up there and I don't
17 think I said what year it was.

18 Q I see.

19 A Not unless I don't remember, but I would have to
20 look that up. I think it was after '48 sometime
21 when her and her husband got a lease on that place.

22 Q Okay, and you said some fish were caught out of the
23 pond?

24 A Out, not -- yes, out of the beaver pond. She used
25 to go fishing there during the winter because she

1 didn't have too much to do then.

2 Q What kind of fish?

3 A I'm not familiar with the species, but I think some
4 of them were rainbow trout.

5 Q Okay. Thank you.

6 THE COURT: Redirect?

7 MR. VEEDER: No. Thank you, Mrs. Sampson.

8 THE COURT: You may step down, Mrs. Sampson,
9 thank you.

10 MR. PRICE: Your Honor, before she does,
11 may I ask one question for clarification?

12 THE COURT: You may.

13

14 CROSS-EXAMINATION CONTINUED

15 BY MR. PRICE:

16 Q Mrs. Sampson, did I understand you correctly to say
17 that water from Omak Creek was used and taken south
18 of the mission for some of the crops south of the
19 mission property?

20 A Yes, it was.

21 MR. PRICE: If I might approach the exhibit,
22 Your Honor, I would like to -- .

23 Q Referring to plaintiff's Exhibit No. 1, and calling
24 your attention to the green-shaded area, the first
25 block here being the Joe Peters allotment, are you

1 familiar with that designation?

2 A Yes.

3 Q And then the allotment just north of that, and then

4 the St. Mary's Mission, Paschal Sherman School,

5 and my question is: Was water from Omak Creek

6 diverted to either of these shaded areas in green?

7 A Just to the one nearest the Paschal Sherman.

8 Q The one --

9 A Yes.

10 Q 526.

11 A That is just a small little field that they had to

12 give that up because it just wouldn't run that way.

13 Q All right. And the water for that field when it

14 was run that way was taken from what was called the

15 falls?

16 A Yes.

17 Q Okay. Thank you.

18 MR. PRICE: That is all I have, Your Honor.

19 Thank you.

20 THE COURT: Further examination?

21 MR. VEEDER: No.

22 THE COURT: You may step down, Mrs. Sampson.

23 MR. VEEDER: Call Mr. Charles Corke.

24 . . .

25 . . .

1 CHARLES P. CORKE, called as a witness on behalf
2 of Colville Confederated Tribes,
3 being first duly sworn on oath,
4 testified as follows:
5

6 THE CLERK OF THE COURT: Would you please
7 state your name to the Court.

8 THE WITNESS: It's Charles Phillip Corke,
9 C-o-r-k-e.
10

11 DIRECT EXAMINATION

12 BY MR. VEEDER:

13 Q Would you state, Mr. Corke, your present employment
14 and where you reside, please.

15 A I reside at 11401 Leyton Place in Oakton, Virginia
16 just south of Washington, D.C. I am currently the
17 principal staff hydrologist for the Bureau of Indian
18 Affairs with central office headquarters in
19 Washington. In that capacity I provide the guidelines
20 and criteria that the Bureau of Indian Affairs
21 administrators follow in western states regarding
22 Indian water resources. It is particularly important
23 in water short areas. That pertains both to
24 groundwater and surface waters.

25 In regard to short water supply this past year,

1 I've administered the Indian drought program that was
2 authorized by Congress by the Emergency Drought Act
3 of 1977 where Congress authorized funding assistance
4 to mitigate the damages of the 1976-77 drought. I
5 handled the legislative program and I prepared the
6 regulations that were published in the Federal
7 Register that gave the guidelines for the program.
8 I received applications, determined eligibility,
9 reviewed them, approved them, allotted the funds back
10 to the projects, and had general oversight of the
11 performance of the projects, on the projects.

12 I was rather proud to be able to allocate some
13 approximately \$25 million to some 54 projects located
14 in 14 of the 17 western states. I am also currently
15 the Acting Director of Irrigation for the Bureau of
16 Indian Affairs, administering the irrigation construc-
17 tion and the irrigation operation and maintenance
18 programs for the bureau. Current -- to kind of give
19 you an idea of the scope -- current year funding of
20 irrigation construction is \$45 million.

21 Q Would you state into the record, Mr. Corke, your
22 educational background as to how it relates to
23 responsibilities you perform for the central office
24 of the Bureau of Indian Affairs.

25 A Well, my entire education, experience and background

1 has been agriculturally oriented. I was born on a
2 farm, raised on a farm, a diversified farm in Kansas.
3 I was an only son and early on in life my father
4 put me to work. I was involved in new crop raising,
5 crop production, management of livestock including a
6 dairy herd and learned all aspects of farming on the
7 side.

8 Q Would you state your educational background in that
9 connection.

10 A I graduated from the University of Nebraska in 1948,
11 College of Engineering, with a Bachelor of Science
12 degree in agricultural engineering, a course which,
13 overly simplified, related to the highest and best
14 use of the land and water resources. I took, cer-
15 tainly, hydrology courses and geology courses and
16 although I don't profess to be a geologist, I do
17 have a working knowledge of that profession.

18 Q What about hydrology, Mr. Corke?

19 A As I mentioned, hydrology courses, I did have, yes.

20 Q And state your earliest employment after leaving the
21 University of Nebraska.

22 A Shortly after graduation I was employed for six and
23 a half years with the Bureau of Reclamation as a
24 professional hydrologist where I became thoroughly
25 acquainted with the standard practices and procedures

1 in the profession, particularly as it related to
2 determining water supply availability and the water
3 requirements of crops and the management of water
4 for crops.

5 Q When did you become a member of the staff of the
6 Bureau of Indian Affairs, please.

7 A After that employment I joined the staff of the Bureau
8 of Indian Affairs in 1954.

9 Q What were your responsibilities in connection with
10 that, Mr. Corke, and particularly where were you
11 located and what did you do?

12 A My initial employment was in New Mexico where my
13 principal assignment was the Indians' representative
14 to the Board of the Middle Rio Grande Conservative
15 District, the district that administers the waters
16 of the Rio Grande into New Mexico. I attempted to
17 look after the Indians' interest. 18 of the 19
18 Pueblos in New Mexico are located within the
19 drainage basin of the Rio Grande. There are severe
20 water shortages, conflicts between Indian and non-
21 Indian users. Much of my time is spent trying to be
22 peacemaker, keep a lid on things. The conflicts,
23 of course, were particularly severe on some of the
24 tributaries of the Rio Grande, for example, little
25 old Tesuque Creek right outside of Santa Fe has many

1 similarities to No Name Creek both being small streams,
2 both having conflicts between Indian and non-Indian
3 users, the water requirements exceeding the supply.
4 It was in connection with that employment that I
5 learned as I witnessed the claims of the powerful
6 non-Indian claimants in the state of New Mexico, the
7 everlasting conflicts that do develop in such water
8 short areas where during dry years they intensify
9 and with normal years of precipitation, of course,
10 it tends to subside.

11 Q And you have experience in other others in the western
12 United States in connection with your background and
13 responsibilities that you had as a hydrologist and
14 agriculturalist and water manager.

15 A I became very well acquainted with the Indian
16 reservation, Indian land in the Salt River Basin in
17 Arizona, a tributary certainly of the Colorado
18 River, as well as the problems of the Indian lands
19 on the Gila River Basin.

20 Q Did you have involvement in the lower Colorado River,
21 for example?

22 A When the case of Arizona v. California was initiated,
23 I was immediately assigned on a full-time basis.
24 For months and months, years, I made studies of water
25 availability, particularly concentrated on preparation

1 of the water requirements for crops varying from
2 alfalfa to the more exotic or specialty crops such
3 as cantaloupe and citrus, other produce. I helped
4 put together exhibits that were for the lawyers
5 preparing the case. I then spent the majority of
6 three summers in San Francisco during the time the
7 case was presented before the Special Master.

8 Q And during the period when the facts were being tried;
9 is that right?

10 A That's right, by Simon Rivkin who was the Special
11 Master appointed by the Supreme Court to take the
12 evidence.

13 Q Now, Mr. Court, would you state into the record your
14 background from the standpoint of your work in the
15 central office, bringing us down to your undertaking
16 responsibilities in connection with the No Name Creek
17 development. Would you just narrate that and move
18 along on there, please.

19 A In 1964 I was transferred to the central office,
20 Bureau of Indian Affairs, where I have been ever
21 since. I was then made Deputy Director of economic
22 development for the Bureau. In that capacity I was
23 the executive officer that administered programs
24 involving the Indians natural resources, that their
25 lands, their waters, their forests, minerals, and

1 certainly in that capacity got intensely involved in
2 conflicts and litigation that was occurring throughout
3 the western United States.

4 Q Would you state, then, your background and knowledge
5 relative to the case that is here on trial of Colville
6 v. Walton and the case of The United States v. Walton.

7 Would you relate that briefly into the record, and
8 state your early involvement in regard to those two
9 cases.

10 A I was involved, of course, in knowing the reasons
11 for the initiation of the Colville v. Walton suit
12 as it related to the issues involved. My first
13 association with them was back in 1968 at the time
14 that the Department of the Interior made the
15 determination that the Lahonton cutthroat trout was
16 an endangered species and established a national
17 policy for preservation and protection of that specie.
18 At that time, I was working very closely with Pyramid
19 Lake Indian Tribe in Nevada. It's Pyramid Lake had
20 been dropping precipitously, as I recall, at that time
21 some 80 feet and the Lahonton trout could no longer
22 leave that lake for their natural spawning ground in
23 the Truckee River.

24 My concerns weren't limited only to the Lahonton
25 trout but in that connection the monopolizing of the

1 water supply by the Waltons did infringe upon the
2 needs of the Lahonton trout at certain times of the
3 year when they needed a continuous supply of pure
4 water.

5 Q Were you acquainted with the national policy that was
6 involved in connection with those?

7 A Yes.

8 Q Would you state into the record what the policy was
9 and your involvement.

10 A As I just stated, the Department of the Interior did
11 determine that they were an endangered specie and
12 established the policy that they would be preserved
13 and protected in every manner possible.

14 Q I hand to you the --

15 MR. VEEDER: May I approach the witness,
16 Your Honor.

17 THE COURT: You may.

18 Q (By Mr. Veeder) -- Colville Exhibit No. 4, and
19 pages taken from that exhibit which is a Federal
20 Register and have you recite into the record the
21 policy to which you allude in connection with the
22 endangered species of the Lahonton cutthroat trout.

23 A Well, these are the principal standards for planning
24 water-related land resources. We certainly follow
25 them. The two general objectives that there will be

1 economic development where possible with full
2 consideration of the environment, our environmental
3 factors, and one of the specific provisos in the
4 environmental factors provide for the protection
5 and preservation of endangered species.

6 Q And were you involved directly in the fulfillment
7 of the obligation of the Secretary of the Interior
8 in that connection?

9 A Yes, I was, and at that particular time the Colville
10 Tribe, as has been pointed out earlier, did dedicate,
11 if that is the word, choose to use that word,
12 dedicated their Omak Lake to this purpose.

13 MR. VEEDER: I offer in evidence, Your
14 Honor, the Federal Register containing the statement
15 of policy and I have taken from that Federal Register
16 the pages that are pertinent to which Mr. Corke just
17 made reference.

18 THE COURT: Are they a separate exhibit?

19 MR. VEEDER: They would -- they are not a
20 separate exhibit, no.

21 THE COURT: You marked as Tribe's Exhibit 4,
22 the pamphlet of water resources, Council report.

23 MR. VEEDER: That's correct.

24 THE COURT: Any objection to the admission
25 of the report?

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MR. SWEENEY: May I see it?

May I ask Mr. Veeder a couple of questions,
probably off the record.

THE COURT: Off the record.

(Brief discussion held off
the record.)

THE COURT: Counsel, while you're looking
at this, it's a good time to take the afternoon
recess.

MR. VEEDER: Whatever you say, Your Honor.

THE COURT: We will be in recess fifteen
minutes.

THE CLERK OF THE COURT: All rise. Court
is now recessed for fifteen minutes.

(Afternoon recess taken.)

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THE CLERK OF THE COURT: The Court is reconvened following recess.

THE COURT: You may continue.

MR. VEEDER: Any objections to Colville Exhibit No. 4?

MR. PRICE: Yes.

Your Honor, I do not see its relevance. It's a general document speaking of policy purposes and I see no reference in there to the Lahonton trout or anything else and I object to it as being in evidence in this case.

THE COURT: What is the relevancy, Counsel?

MR. VEEDER: The statements are in here, that is, the policy to enhance economy, enhance the quality of the environment by the management, conservation, preservation, creation, restoration and improvement of natural resource, cultural resource, and ecological system, and then it goes on and makes a full recitation, Your Honor, in regard to the policy of the United States of America in regard to -- if counsel would look at the components of the environmental objectives which include the following: a, b. When we get over to b, it says management, preservation or enhancement of especially valuable or outstanding archeological, historical, biological,

1 (including fish and wildlife habitat) and the
2 geological resources and ecological systems.
3 Now, pursuant to that the question of the
4 preservation of endangered specie was undertaken
5 by the federal government and they went in here,
6 agency of the Department of Interior known as the
7 Fish and Wildlife Agency and they went in and they
8 planted these fish in cooperation with the Colville
9 Confederated Tribes and this is the basis upon
10 which that was undertaken as a national policy,
11 Your Honor.

12 THE COURT: Mr. Roe.

13 MR. ROE: Your Honor, just further inquiry,
14 perhaps, of Mr. Veeder.

15 As I understand this document, this document was
16 prepared by the Water Resources Council which is an
17 agency of the federal government.

18 MR. VEEDER: Right.

19 MR. ROE: Established by the Water Resource
20 Planning Account of 1965.

21 MR. VEEDER: Right.

22 MR. ROE: And one of their responsibilities
23 was to establish general criteria for future
24 evaluations of federal projects. Is that more or
25 less correct as to what I'm saying, and what you

1 have asked to have introduced into evidence here is
2 that document which has general application to all
3 federal agencies which are project oriented in the
4 federal system; is that a correct statement?

5 MR. VEEDER: That is a correct statement.

6 MR. ROE: And the problem is that I have a
7 little problem with tying that into any reserved
8 right, claims or any other claims of your client in
9 this proceeding.

10 MR. VEEDER: Well, perhaps the Court will
11 have the legal problem to determine, but certainly
12 it was a national policy to preserve the Lahonton
13 cutthroat trout that were put into this area and as
14 we regress in the trial of this litigation, I think
15 you find that set out in the proposed findings of
16 fact and conclusions of law, Your Honor, to the effect
17 that in the administration of the water resources
18 claimed by the Colville Confederated Tribes, the
19 rights which we are being measured by, the irrigable
20 acreage, they decided in cooperation with the United
21 States of America to divert some water down to make
22 it possible for these Lahonton cutthroat trout to
23 spawn.

24 That's an issue of law, Your Honor, whether they
25 had a right to do it or not.

1 THE COURT: It would be my present view
2 that the Indian Tribe had a right to attempt to plant
3 any fish in there if they thought it would increase
4 their beneficial use of their waters. It wouldn't
5 make much difference, it doesn't seem to me, whether
6 it is in cooperation with the federal agency or just
7 did it on their own.

8 MR. VEEDER: I agree totally, Your Honor,
9 but I just wanted to have it in here that it was
10 in full cooperation with the Department of Interior
11 at the time. I thought --

12 THE COURT: Well, I will let it in for what
13 it's worth. (Colville No. 4 admitted.)

14 MR. VEEDER: All right, Your Honor. Thank
15 you.

16 Q Mr. Corke, would you refer to Colville Exhibit marked
17 for identification which is here on the easel and it
18 is No., Colville Exhibit No. 8.

19 MR. VEEDER: And I will hand to the Court
20 an exact duplicate of it. It's a small copy but I
21 thought it would be easier to handle than the full
22 size copy. It shows the irrigation system in the
23 Colville Irrigation Project.

24 May I proceed?

25 THE COURT: Proceed.

1 Q (By Mr. Veeder) Mr. Corke, I ask you to step to the
2 Exhibit marked for identification as Colville Exhibit
3 No. 8, and state into the record first, the extent
4 of your knowledge and acquaintance with the area
5 depicted on that exhibit and how frequently you
6 visited the area and your knowledge in regard to the
7 geological and hydrological aspects of it, and the
8 development that you directed in connection with the
9 irrigation of those lands.

10 A I first was in the No Name Creek basin in 1973. I
11 have been there many, many times since then.

12 Q Would you proceed, then, to outline the background
13 and history of the development of those lands.

14 A The uppermost allotment, 526, which is the pioneer
15 education society tract which has now been conveyed
16 back to the Tribe was, prior to the development
17 there now, a tract that had vestiges of prior farming
18 but had not been farmed for a number of years. It
19 lay well, but it was undeveloped for irrigation
20 purposes.

21 The next tract down, the Peters' tract, and
22 Allotment 892 was in a very, very raw state covered
23 with sagebrush and other brush and sparse growth of
24 native grasses. It was rougher in topography.

25 Q Rougher in topography than --

1 A Than the upper.

2 Q 526.

3 A 526. As we progressed down in the investigation of
4 the valley, as you approach the lower end of 892,
5 there is the deeply incised channel where the No Name
6 Creek arises and becomes normally a live stream. I
7 was particularly interested in that phenomenon the
8 first time I was there because prior to that time
9 we had been proceeding under the assumption that the
10 conclusions contained in the U.S.G.S. report of 1973-
11 74 that depicted the No Name Creek basin as a bathtub
12 of sand and gravel full of water was accurate and so
13 when we saw this phenomenon, it raised some questions,
14 skepticism.

15 Then, as we came to the boundary between the
16 Walton property and the Peters' property, Mr. Walton's
17 old well was right on the edge of the stream there.
18 He had thrown up a dike and created a sump that was
19 backing water up onto the Peters' property. When he
20 was pumping that well, obviously, a cone of depression
21 extended under the Indian property, was de-watering
22 that property.

23 The phenomenon that I expressed in the spring
24 zone continued on down about halfway, at least,
25 between his north boundary and his buildings. As we

1 reach his building site or near his building site
2 another aspect of the phenomenon was -- became
3 obvious. Mr. Walton had attempted to get domestic
4 water from wells which he had drilled near his
5 buildings and was unable to get a supply for his
6 domestic and farming needs at that point.

7 MR. PRICE: Your Honor, I'm going to object
8 and ask that that part of the answer be stricken as
9 unresponsive. There has been no foundation for that
10 testimony whatsoever, and it is totally inadequate
11 in fact.

12 THE COURT: Counsel, do you respond to that?

13 MR. VEEDER: Well, I -- I will. I have
14 asked the witness to go explain his background and
15 knowledge of the area. He has done what he was asked
16 to do. He went down and found the deeply incised
17 stream system, and I will also say, I was with him
18 at the time. We had with us the United States
19 Geological Survey report. It became increasingly
20 clear to anybody looking at that system that it was
21 a different deal. When we got down further the issue
22 came up about the well. I have asked Mr. Corke to
23 get into the hydrological and geological aspects of
24 this. He is qualified to do so and he is reporting
25 what he observed. Now, I don't know, really, the

1 character of Mr. Price's objection, but --

2 THE COURT: Well, I will let the answer
3 stand. Go ahead.

4 MR. VEEDER: Thank you, Your Honor.

5 A At this time, I'm kind of covering our walk-through
6 which young Mr. Walton was with us also, by the
7 way, on that tour through the basin.

8 As you approach the boundary between the upper
9 allotment of Walton's, 525, and 2371, you reach the
10 surface diversion point where water is diverted over
11 into a sump from which Mr. Walton ran sprinklers.

12 As you progress down the valley in that area,
13 I was impressed with -- you come to wet property,
14 what in my business you call wet land. Although
15 lands weren't being irrigated, those lands weren't
16 being irrigated that day, water was standing on it
17 to such an extent that I literally got water in my
18 shoes. The succeeding day he was irrigating those
19 lands.

20 Q He was irrigating wet lands, Mr. Corke?

21 A Yes, he was, those wet lands that had very low
22 quality of vegetation on them either unpalatable or
23 low palatability vegetation. As you progress on down
24 Mr. Walton's property approaching the granitic lip
25 which is a natural dike, the swampiness increased.

1 I could only presume that his squirting water on these
2 lands, applying water on these lands --

3 MR. PRICE: "I presume" I do not feel, is
4 appropriate testimony in this Court.

5 THE COURT: Counsel, I'm going to let it
6 stand, but I share your concern that it is not direct
7 testimony.

8 MR. PRICE: Thank you.

9 Q (By Mr. Veeder) Well, Mr. Corke, let's remove the
10 word "presume" and will you state into the record
11 what you observed in connection with what you have
12 alluded to as the wet lands on Mr. Walton's property,
13 describe in some detail, based on your background
14 as an agronomist and agriculturalist the kind and
15 type of vegetation you observed in that area of Mr.
16 Walton's property.

17 A There was much phreatophytic growth, water-loving
18 vegetation, saltgrass and so forth, and very simply
19 the application of water to those lands would be a
20 leaching process to prevent the salt from coming to
21 the surface and destroying even the low quality
22 vegetation that was then existing on the land.

23 Q And moving on down, you got to the granitic lip.
24 What did you observe in that particular area there,
25 Mr. Corke?

1 A We proceeded below the granitic lip, coming to
2 Allotment 901. We could see very clearly vestiges
3 of the irrigation system that Mrs. Sampson just
4 described. We followed that, the ditches on both
5 sides. On the west side there is a fork in the
6 ditch and you could follow the line of the ditch,
7 ditches, both ditches as they came down the valley.
8 On the other side --
9 Q You are speaking now of Allotment S-901, Mr. Corke?
10 A Yes, indeed. On the other side of the creek the
11 remains of the flume were there. The ditch following
12 the foot of the bluff around, the remains of the
13 house, the barn, the corral, even the apricot orchard
14 is still there. We could follow out the limits of
15 the ditch that continued over into the very corner
16 of 903.
17 Q Yes, and then did you go on across 903 and did you
18 have any observation with regard to that area in 903?
19 A We went across 903, observed its capabilities which
20 were very similar to the Peters' property and made
21 the determination certainly that we wanted to make
22 a soils investigation of that area.
23 Q Was that undertaken; do you know?
24 A That was done.
25 Q What did you find about 903 in the area to which you

1 were just alluding? Was it irrigable in character?

2 A The irrigable areas are outlined as determined by Mr.

3 Casmark (phonetic) of the Morrison-Maierle firm.

4 Q And now, proceeding again, Mr. Corke, would you state

5 into the record your responsibilities that you had

6 in regard to the system that was ultimately developed

7 in connection with the Paschal Sherman Indian School.

8 A We had concluded that the concept, as I said, the

9 bathtub concept, in the U.S.G.S. report was wrong.

10 At that point in time a well locator, geologist-type,

11 named John Noble was doing some work for the Colville

12 Tribe. He and his partner pointed out to us there

13 had to be some barrier there.

14 Q Barrier where, Mr. Corke?

15 A There had to be some barrier that forced the spring

16 zone, forced the live stream to occur at that point.

17 There had to be a lower, a barrier at that lower end

18 of that of some type. We immediately recognized that

19 we needed investigations to delineate what was

20 underground there.

21 Q What did you do then, Mr. Corke?

22 A We hired the experts that worked for us on other

23 locations, the Morrison-Maierle firm, and Dr. Charles

24 Robinson who is *nationally renowned* *(initials)*, a geologist,

25 groundwater hydrologist from the Denver area, brought

1 them in; they made surfacial geology analyses. We
2 drilled the wells, the three production wells, Paschal
3 Sherman, the Colville 1 and Colville 2, also drilled
4 the observation well, Paschal Sherman observation well
5 right on the bank of Omak Creek, and the Peters'
6 observation well which is very near Colville No. 2
7 at the lower end of the Peters' property.

8 Q And what were the objectives of those observation
9 wells that were put in there, Mr. Corke, would you
10 state into the record.

11 A Ended up serving a dual purpose. The first purpose
12 was an exploratory one. The data gathering kind,
13 but we anticipated water. We had them drilled and
14 cased so they could be production wells if it turned
15 out that way which it did. The water was there. The
16 pump test indicated they were production well
17 capabilities and based upon those factors, I then
18 had the Paschal Sherman-Colville irrigation plan
19 developed for utilization of those waters. The soils
20 up here as well as down -- at the upper end as well
21 as 901, 903, had been classified by Mr. Casmark.

22 Q In your responsibility, Mr. Corke, did you have any
23 knowledge of the background and history of the
24 initiation in the case of United States v. Walton,
25 going back to your period as Deputy Director of Economic

1 Development?

2 A Yes, I did.

3 Q Would you state that into the record.

4 MR. SWEENEY: I'm going to object to this.
5 I don't see the relevancy of any events that might
6 have taken place back in Washington leading to the
7 initiation of the lawsuit of the United States v.
8 Walton. There is a lawsuit pending. There is a
9 lawsuit pending. That is all that is really relevant
10 in the case. What factors went into a decision to
11 bring the case certainly shouldn't be part of the
12 record.

13 MR. VEEDER: Well, Your Honor, I would just
14 as soon have the matter brought to the surface so
15 far as the Bureau of Indian Affairs is concerned at
16 that time, as far as Mr. Corke was concerned at that
17 time, the issue was cooperation fully with the Colville
18 Confederated Tribes. Mr. Corke certainly was the
19 principal administrator at the time that the request
20 through the Solicitor's office to have the Department
21 of Justice intervene in this case and he can testify
22 in regard to that certainly. I think the issue, Your
23 Honor, of the dual cases here is going to be a problem
24 created partially by the bureaucracy in Washington,
25 D.C., and I thought at this time it would be a good

1 idea to bring it up. If Mr. Sweeney has got
2 opposition to it, I'd just as soon proceed without
3 it, but I think that it will be relevant before we
4 are through because we do have a conflict of
5 administration as to who is going to run this system.

6 THE COURT: Well, I don't think the
7 resolution of this conflict is going to depend on
8 the testimony of this witness, I don't believe. Do
9 you think it's relevant to that issue?

10 MR. VEEDER: Well, I did, Your Honor, and
11 I brought it in for that purpose. I think the issue
12 of where the Bureau of Indian Affairs and where the
13 Department of Justice stands in this matter at this
14 moment could be of extreme importance from the
15 standpoint of our conference about the settlement
16 of this case. I think it's extremely important that
17 this issue be clarified as to the real policy of
18 initiation of this lawsuit, the protection of the
19 rights to use of water of the Colville Confederated
20 Tribes in this litigation, and, above all, the
21 background and history of the litigation.

22 MR. SWEENEY: Your Honor.

23 THE COURT: Go ahead.

24 MR. SWEENEY: Colville Tribe has brought an
25 action against the Waltons in which the State of

1 Washington has intervened. The United States has
2 brought a separate action against the Waltons and
3 the State of Washington. The factors leading to the
4 decision by the United States to bring this action,
5 separate from the case of the Colville Tribe,
6 certainly have no bearing and should not be a part
7 of the record in the case. That is a decision that
8 can be made by the United States officials, were
9 made, the case was brought. The factors they con-
10 sidered in bringing the case have no bearing on
11 the decisions to be made either on the facts or the
12 law in the case here and certainly Mr. Corke can't
13 testify to the factors that led to a decision by
14 the officials of the United States to proceed in a
15 particular manner.

16 THE COURT: Objection will be sustained.

17 Q (By Mr. Veeder) Now, Mr. Corke, would you proceed
18 to explain the kind and type of development that
19 you recommended and the location of the wells and
20 how it came up that they were located as you have
21 depicted them there, referring to Colville Exhibit
22 No. 8.

23 A The wells were distributed such -- in such a pattern
24 that they could be efficiently and effectively used
25 to serve the area. A part of Allotment 892 was first

1 irrigated in 1975, in the fall, as was a part of
2 901.

3 In July of 1975 Mr. Walton drilled his new
4 irrigation well, again, very near the boundary of
5 the Peters' property, obviously pumping water from
6 underneath the Indian properties.

7 It became obvious to us that we had to have
8 controls and management, monitoring of the resource
9 in order to preserve it and protect it, and that is
10 what, of course, led to the Court's order of July 14,
11 1976, where the Court did enter the order. It was
12 a very complex order, but very manageable which
13 allowed conveyance of the waters crossing the creek --
14 across the Walton property to serve the several
15 purposes below the granitic lip.

16 Q Would you state your relationship with the Colville
17 Confederated Tribe throughout this period of
18 developing the Paschal Sherman irrigation agricultural
19 program as it relates to the Colville Irrigation
20 Project. With whom did you work in that connection,
21 Mr. Corke?

22 A It was continuing closest coordination and cooperation
23 with the Colville Business Council on all aspects.
24 The Bureau of Indian Affairs' policy was then and
25 always has been, and still is, to support the Colville

1 claims in Colville v. Walton.

2 MR. SWEENEY: Now, just a moment. I must
3 object to this, Your Honor.

4 As the Court will note from the proposed findings
5 of fact and conclusions of law that have been filed
6 by the parties, there are divergences even between
7 the postures taken by Mr. Veeder on behalf of the
8 Tribe and the United States.

9 When Mr. Corke says the BIA has always taken the
10 position to support particular positions of the Col-
11 ville Tribe, that is not correct. The position of
12 the United States is articulated here by the United
13 States Attorney's Office and the Department of
14 Justice.

15 MR. VEEDER: Your Honor, I would suggest
16 that what Mr. Corke had said is within the purview
17 of his own concept and his own responsibility. Now,
18 it would occur to me that Mr. Sweeney -- and I was
19 somewhat surprised that he was objecting to this.
20 If he wants to put on a witness to the contrary to
21 contradict Mr. Corke, I think he has the right to do
22 so, but I do --

23 MR. SWEENEY: Excuse me. I believe it goes
24 farther than that, Your Honor.

25 Mr. Corke is purporting to speak for the United

1 States when he says it is a policy of the BIA. He
2 is not speaking for the United States, Your Honor.

3 THE COURT: I will sustain the objection.

4 Q (by Mr. Veeder) All right. Proceeding, Mr. Corke,
5 will you outline your responsibilities, then, in
6 regard to the further development of the Colville
7 Irrigation Project as set forth on the Exhibit No.
8 8 and the extent of the development that has preceded.

9 A The administrative determination was made that in
10 recognition of the inherent sovereign powers of the
11 Tribe that we would support the Tribe, their right
12 and authority to develop the Paschal Sherman Indian
13 School agricultural program.

14 MR. PRICE: Mr. Sweeney, if I might have
15 the opportunity.

16 THE COURT: Mr. Price.

17 MR. PRICE: This testimony of Mr. Corke
18 has been replete and repetitious with his value
19 judgments that amount to claims in this case.

20 I would ask the Court -- and I know the Court
21 does remember that Walton is a part of this case --
22 between getting kicked back and forth between the
23 two giants here, we would like to have our objections
24 heard and maintained as a part of the record in this
25 case. We object vehemently to this type of testimony

1 as not being responsive.

2 THE COURT: The difficulty, Mr. Veeder,
3 as I see it, I'm not quite sure yet whether Mr. Corke
4 is here in the capacity of an expert hydrologist as
5 an expert witness, in which case, of course, he can
6 give opinion on matters that are in issue in the
7 trial, but I don't see how he can testify as to the
8 position of his agency. He is not the one who
9 formulates that issue -- that policy.

10 MR. VEEDER: Well, Your Honor, I think that
11 the witness is testifying based upon his own known
12 authority to appear here. He was assigned, if evi-
13 dence is wanted in the record, to the effect that
14 he was to be the representative of the Bureau of
15 Indian Affairs in this matter. He proceeded to do
16 so. He has worked closely with the Tribal Council
17 on this matter. I wasn't aware until a few minutes
18 ago, frankly, that there was going to be this kind
19 of conflict. I didn't know there was going to be
20 objections to it, but I do think that it is extremely
21 important that it be brought out here now that the
22 Colville Confederated Tribes, so far as I am
23 concerned, and I'm quite positive in regard to Mr.
24 Corke, has had nothing but the fullest cooperation
25 for months, that we were assigned to perform these

1 functions. It may disagree with the position of
2 the Department of Justice. If they want to call a
3 witness to contradict Mr. Corke, I think that is
4 all right.

5 As I said before, I regret, due to the shortage
6 of time with which we are confronted, we are burning
7 up some of that valuable time. I will have Mr. Corke
8 proceed, if it's all the same to Your Honor. He's
9 put this matter into evidence. It is there. If they
10 want to make a motion to strike, I have no objection --
11 I won't say that. It can be -- a motion to strike
12 can be entered. I would like to have Mr. Corke get
13 through with this evidence so I could call some other
14 witnesses.

15 THE COURT: I'm going to let him proceed
16 subject to a motion to strike, because otherwise I
17 would have to let you make an offer of proof anyway
18 and it would take the same time.

19 MR. VEEDER: That is right, Your Honor.

20 MR. SWEENEY: Well, --

21 Q (By Mr. Veeder) Would you just proceed along --

22 THE COURT: Just a moment. Mr. Sweeney.

23 MR. SWEENEY: I wasn't quite sure of the
24 scope of allowing him to proceed. Is the previous
25 objection made by the United States as to Mr. Corke's

1 speaking and articulating policies of the federal
2 agency or of the United States that was sustained,
3 Your Honor, is that now overruled, or --

4 THE COURT: No. I don't know what he's
5 going to ask now. I just told him he could continue
6 and I will treat it as an offer of proof.

7 MR. SWEENEY: All right.

8 Q (By Mr. Veeder) Would you go on and state into the
9 record what your responsibilities --

10 MR. PRICE: Your Honor, I would like to make
11 a motion to strike. My complaint is, he can testify
12 without the editorial comments about this or that
13 sovereign right going into the record, I think.

14 THE COURT: Counsel, I'm in complete
15 agreement with you. I'm not sure exactly, until we
16 get the record transcribed, what is editorial and
17 what is fact. We are going to have to treat that
18 at a later time, but in order to get it into the
19 record and save time, I'm going to let him continue
20 and treat it as an offer of proof.

21 Q (By Mr. Veeder) Will you proceed, Mr. Corke, then,
22 as to what your relationship was with the Colville
23 Confederated Tribes and the fulfillment of your
24 responsibilities as you perceive them to be.

25 A I was specifically assigned by the Commissioner of

1 Indian Affairs to direct the intensive investigation
2 of No Name Creek basin with the objective of preparing
3 for trial. I was also directed to assist them in
4 the development of the Indian School agricultural
5 program including the expenditure of funds under my
6 general direction. I was proceeding with the
7 operations under the Court's order of July 14, 1976,
8 where we were able to provide water for the uses
9 below the granitic lip. We made the determination
10 in closest coordination and cooperation with the
11 Colville Tribe that we would restrict the application
12 of water to the land to benefit the Lahonton trout.
13 I can say right now that, bless their little hearts,
14 they cooperated beyond our fondest expectations.
15 The Tribe had renovated the lower end of the channel.
16 They came in there, they spawned, they hatched, they
17 survived, they grew. When they got to fingerling
18 size, the requirement for water was reduced and at
19 that time, this past summer in August, we then had
20 the system put in to irrigate a portion of 903. A
21 stand of alfalfa was planted, was created there.
22 The beginning of October it was an excellent stand.
23 I might say that that will be one of the first areas
24 requiring water this spring to make sure that that
25 crop, baby crop will survive, and the school certainly

1 needs its production as well, in their cattle program.

2 Q Mr. Corke, would you state into the record, based
3 on your personal knowledge, the extent that you
4 have the information, the expenditures that you
5 directed in connection with the development of that
6 Colville irrigation project.

7 A Could I refer to my notes?

8 Q What?

9 A Could I refer to my notes.

10 Q Yes, I think you can refresh your memory.

11 A The funds for development were provided to the
12 Colville Tribe in three increments. I had been down
13 here on the ground. I had had the plan developed
14 when the matter came before me at my desk. There
15 was never any question of any partial project. It
16 was the total bundle. The first sum provided was
17 \$21,000 which was labeled for exploration and
18 development. The majority of that went for the
19 drilling program conducted by the Storey-Armstrong
20 Drilling Company of Puyallup which included the three
21 wells that are now in production plus the two
22 observation wells.

23 MR. PRICE: Your Honor, I move to strike
24 that as not responsive --

25 MR. VEEDER: I can't hear it, Your Honor.

1 MR. PRICE: I move to strike the answer
2 as not responsive. As I understood the question, it
3 was where did the funds come from and I have not
4 heard any response in that regard. I may have missed
5 it.

6 THE COURT: No, I think the question was
7 a little broader than that. I will let the answer
8 stand. Go ahead.

9 A The funds were provided by the Bureau of Indian
10 Affairs in response to resolutions supported by a
11 sheet of specification details of the needs. The
12 \$21,000 was provided first. When the drilling
13 program then developed that there were -- there was
14 water there and the production capabilities of the
15 well, then came the request for the largest sum of
16 money which was, when it came before me, as I said,
17 was a request for \$110,000 which was granted and
18 was for the total distribution system, included the
19 pumps, motors, the sprinkler system, all of the
20 delivery system for all of the green area.

21 Q And when you say "green area," Mr. Corke, would you
22 kindly refer to the exhibit in question.

23 A The green area shown on Colville Exhibit 8, but it
24 is labeled as irrigated acres, 1977.

25 MR. VEEDER: May I approach the exhibit,

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Your Honor.

Q Mr. Corke, I ask you to look at the block down there in the right-hand corner and state into the record what appears there on Colville's Exhibit marked No. 8 for identification.

A It's a summary of the acres, has a column listing the various allotments and trust tracts and the irrigated acres, 1977, by parcel, and the next column, the undeveloped irrigable acres, again by parcel, and then the totals by the parcel.

Q And did you take into consideration the acreages and available supply of water and other elements that went into approving expenditure of funds and the development of that system, Mr. Corke?

A Certainly did. We were missing one more increment of money that I should cover. I mentioned three increments.

Q All right.

A And the third one was \$31,000 which was the last one provided which was specifically earmarked for 903 because in the interim an amendment to the Tribes' requesting of funding of the, originally, \$110,000 had been made when the decision was made to permit this Paschal Sherman Indian School to use about \$30,000 of the \$110,000 for material, supplies and equipment

1 which they direly needed in order to expand their
2 farming operations to the scale. So, what we have
3 is a total advancement to them of \$162,000. There
4 is still \$8,000 of that available for the rest of
5 903 which leaves \$154,000 that was expended for
6 developmental purposes, some of which could be
7 appropriately charged to exploration, but there is
8 that \$154,000 that was advanced to them.

9 Q Have you an opinion, Mr. Corke, as to the feasibility
10 of the project as developed to the present point?

11 A Specific detail, benefit-cost analyses were not made
12 but in any judgment called of a person in my business
13 there is no question whatsoever of the feasibility.
14 In fact, the value of the land in raw versus irrigated
15 state, are almost equal to the expenditures that were
16 placed thereon.

17 Q Are you acquainted with the crops that were raised
18 this year and were you in the room when testimony
19 was offered as to the crops that were taken off there
20 and the value of the crops?

21 A Yes.

22 Q And the utilization?

23 A Yes, I was.

24 Q And have you a recollection of what that ran to?

25 A As I recall, \$21,000 hay crop.

1 Q And that was after food, feed being taken for the
2 stock; right?

3 A I'm not certain.

4 MR. VEEDER: I have no further questions.

5 THE COURT: Mr. Price, cross-examination.

6 MR. PRICE: I have, Your Honor.

7 Good afternoon, Mr. Corke.

8 THE WITNESS: Yes, sir.

9

10 CROSS-EXAMINATION

11 BY MR. PRICE:

12 Q Mr. Corke, as you walked, --

13 MR. PRICE: May I approach the exhibit,
14 Your Honor.

15 Q -- as you walked across the property in question that
16 we have been talked about here, you talked about
17 approaching a wet area on the Waltons' property near
18 the granitic lip; is that correct?

19 A The wet area intensified near the granitic lip, but
20 it started about approximately the point of the
21 surface diversion which is the boundary between the
22 upper two.

23 Q And didn't you observe, as you walked the course of
24 Walton's property, that the springs, the water that
25 appeared on the surface came from springs that arose

1 on the Walton land?

2 A The spring zone extended on to Mr. Walton's property,
3 yes, sir.

4 Q The springs that were -- there are several spring
5 zones on these lands; are there not?

6 A The only ones that are of significance that I saw
7 are the ones that are in the upper area and above
8 Waltons' buildings, home.

9 Q Mr. Corke, would you answer my questions, please.
10 There are several spring zone areas on this property,
11 specifically on the Walton property; are there not?

12 A I have seen one or two small spring areas further
13 down, yes, sir.

14 Q And in the spring area that you say extends up into
15 the Joe -- into the Peters' allotment, which we
16 might refer to as the Peters' allotment, immediately
17 adjacent north of the Walton property, did you
18 observe any water arising from that spring on the
19 Peters' property?

20 A Yes, sir.

21 Q You did?

22 A That -- that first walk through, yes, sir.

23 Q And the creek didn't start a few feet down into the
24 Waltons' property?

25 A No, there was flow from the spring above, above the

1 sump. The sump had water in it that Mr. Walton had
2 constructed right at the boundary of his own well.
3 Q And when you get down to that wet area, is it not
4 true that the underlying granite rises up to meet
5 the surface material deposited in that valley at
6 that point?
7 A There are points where it does, yes, but there are
8 other points where, sections, where it is just very
9 fine tight soil.
10 Q And as the granite rises up with the soil that is
11 overlying it, the water has to come to the surface
12 to get over that granite lip; doesn't it?
13 A Granite lip, yes. It's a dike.
14 Q And you're going to find a wet area there; aren't you,
15 as the water does that?
16 A Yes, very swampy, just as you get to that dike.
17 Q Thank you. And that is going to occur whether Mr.
18 Walton runs any sprinklers or not, on occasion; isn't
19 it?
20 A At that locale, it will generally, yes.
21 Q You indicated that the young Mr. Walton joined you in
22 that walk-through, found him to be very cooperative.
23 A Yes, sir.
24 Q He was forthcoming with any information you needed.
25 A Yes, he was. As a matter of fact, he showed us the

1 abandoned domestic well that we referred to.

2 Q Now, Mr. Corke, when -- what year did you -- is it

3 1968 you first became involved with the Colville

4 Confederated Tribe?

5 A My relation to the year '68 was my first involvement

6 with the specie, the Lahonton trout specie.

7 Q Okay, and when was it that you became involved in

8 preparing for this litigation?

9 A It was either '73 or '74.

10 Q Okay. When did you first -- are you saying that

11 you devised the plan, you actually designed the

12 pumping and irrigation facilities that now exist

13 on the allotments and the Tribal property?

14 A It was not done by me personally, no. I had -- I

15 had those things done by the consultant experts.

16 Q In other words, you personally didn't do them.

17 A That is correct.

18 Q Where are the resolutions that provided for the

19 funding of this program?

20 A I think there are copies at three spots, I'm sure,

21 Portland, Nespelem, and Washington. I don't have

22 them with me.

23 Q You do not have those papers with you?

24 A No, I do not.

25 Q And when were those resolutions passed, adopted?

1 A I can't -- I can't give you the precise dates. I
2 know the \$31,000 would have been early in '77 because
3 it pertained to 903. Your others were before that,
4 but I don't know the precise dates.

5 Q Did you tell me that the \$31,000 was related to the
6 Paschal Sherman school in some manner?

7 A Yes, Paschal Sherman. It was a part of the Paschal
8 Sherman Indian School agricultural program, but it
9 is specified for the development of Allotment 903.

10 Q And the development of this program for the Paschal
11 Sherman school, is that your testimony, that part
12 of this program was designed or developed for the
13 Paschal Sherman school or was --

14 A The entire --

15 Q Or was it designed for this litigation?

16 A The entire program was designed for the school.

17 Q Okay, can you tell me what the needs that went into
18 this design were? In other words, were you trying to
19 achieve so many acres of hay to support so many
20 number of cattle, to support so many number of children
21 at the school, and, if so, can you tell me that,
22 please.

23 A It was designed to serve the irrigable area. The
24 areas that were in the biggest blocks, and most
25 easily developed, or the ones in green that were

1 developed first.

2 Q Well, what were the needs of the school that you were
3 trying to meet in designing this irrigation program?

4 A The needs of the school were that they have this
5 beef herd of about a hundred head plus the need for
6 any supplemental income that they could derive which
7 would require less subsidy from another source.

8 Q Does this appear in any other resolutions to which
9 you referred?

10 A I'm sure it does.

11 Q And can you obtain those for us?

12 A Yes, yes I can.

13 Q All right. You say this project that was designed
14 is feasible, and you determined that it is feasible
15 after putting it into operation; is that correct?

16 A When the money was advanced there was no question
17 but what it was feasible.

18 Q What do you mean, "when the money is advanced"?

19 A When the money -- when those funds requested were
20 then provided to the Tribe for the use of the school.

21 Q Was a cost-benefit study run to determine what the
22 benefits would be versus the costs necessary to
23 develop this program?

24 A No, as I stated, we did not -- there was not the
25 benefit -- we did not engage in a benefit-cost analysis,

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per se.

Q Wouldn't that be necessary to determine practically what would be practical to irrigate?

A Not -- it's not necessary, no. This has such obvious feasibility that a judgment call of people working in the business on a regular basis, there is no doubt whatsoever.

Q That is if you have unlimited supply of funds; is that what you're saying?

A You don't have unlimited supply of funds.

Q With a significant supply of funds, you can; is that a fair statement?

Let me put it this way --

A We don't --

Q Let me put it this way.

A We didn't establish priorities --

MR. VEEDER: Just a moment. Let the witness answer the question.

A I thought maybe it would be clarified to say that we did not establish this in a priority scale compared to feasibility on the basis of priority. We do not do that.

Q If the individual allottee or a farmer were going to invest in any of those individual tracts of land shown on Exhibit 1, he might not be able to do it

1 practically if he didn't have access to the funds to
2 which you had; would he?

3 A I think he could. I think he could borrow funds and
4 obtain assistance of any number of sources for this
5 type of development.

6 Q And the proof of the pudding in that respect would be
7 a farmer who had gone and attempted to borrow in that
8 regard; wouldn't it?

9 A Yes.

10 Q Thank you.

11 In the block on Exhibit 1 you have an irrigation
12 summary that segregates individual allotments, the
13 number of irrigated acres in 1977, and the undeveloped
14 irrigable acres in columns; is that correct?

15 A That's correct.

16 (Referring to Exhibit No. 8.)

17 Q And how did you arrive at the undeveloped irrigable
18 acres, say for Allotment H-892 where you show 43.6
19 acres under irrigation and 14.3 still susceptible
20 of irrigation?

21 A I think I mentioned that the total irrigable area
22 is, of course, the green plus the yellow, but what
23 was put into production was the part that was most
24 easily served and was served first.

25 Q Why weren't the yellow areas served under the present

1 system?

2 A They would require more difficulty to arrange a
3 system that will reach them.

4 MR. VEEDER: Mr. Price, may I?

5 I would like to make an offer on that, Your
6 Honor, of Colville Exhibit No. 8. I had not offered
7 it.

8 THE COURT: That is right. It has not
9 been admitted. Are there any objections to Colville
10 Tribe No. 8.

11 MR. SWEENEY: The Government has no
12 objection.

13 THE COURT: No. 8 will be admitted.
14 (Colville Exhibit No. 8
15 admitted.)

16 MR. PRICE: Defendant, Walton, has none
17 for demonstrative purposes, Your Honor, except for
18 the values they have placed on there as not
19 representing verities, that those are items at issue
20 in terms of the irrigable acres and that sort of
21 thing.

22 MISS ECKERT: And the State would also join
23 in Mr. Price's position with respect to that Exhibit 8.

24 MR. PRICE: We have no objection to it going
25 in for purposes of representing the Tribe's position

1 as demonstrative.

2 THE COURT: Well, my notes indicate that
3 this witness previously testified as to the number
4 of irrigable acres. Am I mistaken on that?

5 MR. PRICE: I do not recall that he did so,
6 Your Honor. Maybe he did. I do not recall that he
7 specified acres with respect to individual tracts.

8 THE COURT: No, no, not individual tracts,
9 gross.

10 MR. PRICE: I'm sorry, Your Honor. I don't
11 have that recollection either. He may have.

12 THE COURT: This may be very important
13 because the Exhibit 8 carries with it a chart at the
14 lower right-hand corner and if there is no testimony
15 supporting that chart, I should know it.

16 MR. VEEDER: Your Honor, I specifically
17 called to Your Honor's attention, and I had Mr. Corke
18 testify in regard to the block down here in the
19 right-hand corner and he lifted it up and read it
20 into the record.

21 THE COURT: Well, that's the way my notes
22 show.

23 MR. VEEDER: That is certainly the way it
24 went in, Your Honor.

25 THE COURT: All right, go ahead.

1 Q (By Mr. Price) Mr. Corke, I was asking you about
2 Allotment 892 in that where you show undeveloped
3 irrigable acres of 14.3 acres. As part of this
4 project, were you familiar with the leases that had
5 been acquired governing the land where this irrigation
6 facility was being developed?

7 A I was aware that the Tribe had leases on these
8 properties. I was not aware of the specific content
9 of the leases.

10 Q Were you aware, specifically, with respect to the
11 lease on Allotment H-892 that the Tribe is limited
12 to no more than 45 acres being cultivated?

13 A No, I was not.

14 Q So that 14.3 undeveloped irrigable acres isn't
15 appropriate in connection with this project at the
16 present time; is it?

17 MR. VEEDER: That calls for a legal
18 conclusion, Your Honor. I object to that and ask
19 the witness not to reply to the question until it
20 is ruled on.

21 THE COURT: Well, I have more concern than
22 that, Counsel. As I understand what the prior
23 cases have said, one of the problems the Court has
24 is to ascertain the extent of irrigable acres.
25 Whether they are now irrigated is immaterial, I think.

1 So that one of the questions that is going to
2 ultimately have to come out of this case is the extent
3 of potential irrigable land on the Reservation
4 irrespective of its present --

5 MR. VEEDER: Irrigative state, and that is
6 right, Your Honor. That is right.

7 MR. ROE: Your Honor, just -- I'm not sure
8 whether we are playing with semantics, but I think
9 the language that we are worrying about is the language
10 that is "practicable" irrigable acreage as described
11 by the Supreme Court. Now, that may need some further
12 interpretation by you.

13 THE COURT: Well, that isn't the issue
14 before us now. The issue before us now, as I
15 understand it, is the fact that a certain allotment
16 lease carries a restrictive covenant as to the number
17 of acres, it doesn't seem to me to have anything to
18 do with the issue that I have to find, it's the extent
19 of irrigable acres. Merely the fact that the allottee
20 may have told the present tenant you cannot farm or
21 irrigate or whatever you want to call it, more than
22 45 acres, doesn't seem to me to have anything to do
23 with the question of the number of irrigable acres
24 on that allotment.

25 MR. ROE: I think maybe I agree with you,

1 Your Honor. I was just worrying about the use of
2 "potential" as compared with "practicable" in the
3 long-range mindset in this case.

4 THE COURT: I won't worry about that nicety
5 at the moment. You may proceed.

6 MR. PRICE: Your Honor, for the record, I
7 would like to assert that defendants, Waltons, feel
8 that the case should be, must be relegated to the
9 specific facts in this case and not to adjudicate all
10 water rights whatever they might occur on the
11 Reservation, which raises the issue that Your Honor
12 has just alluded to, and that is why we try and confine
13 it to the factual items in question.

14 THE COURT: Go ahead. I'm afraid the issue
15 may be broader than that, but we will argue about that
16 later.

17 Q (By Mr. Price) Mr. Corke, you indicated at one time
18 your drilling program showed that the water was there.
19 Can you pinpoint a time when that was determined,
20 for me?

21 A At the time we conducted the drilling.

22 Q And when was that, please, by year, month, some
23 designation.

24 A Either the last part of '74 or early '75.

25 Q Latter part of '74 or the early part of '75.

1 A Yes.

2 Q That would have been at the conclusion of an irrigation
3 season, then, prior to the start of a new irrigation
4 season?

5 A It was in -- it was conducted in the summer of '75.
6 I say that because I remember Mr. Walton's new well
7 had just been finished at the same time we were
8 conducting that program, the drilling program.

9 Q You now think it's the summer of '75?

10 A Yes.

11 Q All right, and in the summer of '75, during the
12 irrigation season, you determined that it was
13 feasible and that the water was there?

14 A Yes.

15 Q And Mr. Walton was irrigating at that time that you
16 made that study and that determination; was he not?

17 A Yes, he was.

18 Q And he had been for several years; had he not?

19 A Yes.

20 Q When you developed this program, you were aware,
21 were you not, that when you implemented it your program
22 would be responsible for drying up the surface flow
23 of No Name Creek entirely?

24 A We weren't aware that that would happen, no. We --
25 we were immediately aware that from observation of

1 the recorders on the wells that there was certainly
2 a direct and definite interrelationship between the
3 wells.
4 Q Why didn't you know that you would dry up the surface
5 flow of the creek, Mr. Corke?
6 A At that point in time we didn't know with exactitude
7 the availability of water in the aquifer.
8 Q Well, how much water did you design that you were
9 going to pump north of Mr. Walton's property in
10 this system?
11 A Sufficient to serve the irrigable areas.
12 Q What was that figure, please? What was "sufficient"?
13 A The quantity, I don't have it. I don't have it
14 right before me. We have it and it will be presented
15 by the next witness.
16 Q I'm asking you, Mr. Corke, not as to what actually
17 was withdrawn this year, or in any other given year,
18 but what your design projected your needs, how much
19 water were you going to withdraw, did you anticipate
20 you had to withdraw.
21 A That is the amount I was speaking of, the water
22 requirement for the sprinkler irrigation that we had
23 prepared an exhibit on, that I have had prepared.
24 Q And was that prepared in advance of the actual
25 installation of this irrigation project or subsequent

1 to it?

2 A Concurrently with it.

3 Q Concurrently.

4 A At the time of the design of the system, it was
5 prepared which was at the completion of the wells,
6 before the system was placed in operation.

7 Q Well, how could you make a determination that there
8 was sufficient water there to make this a feasible
9 project when you don't know until you put the system
10 in?

11 A We knew we had the capacity of the wells to serve
12 those lands. We knew what we -- what the water
13 requirements, the irrigation water requirements
14 were for sprinkler irrigation on those soils.

15 Q And you made these determinations with full knowledge
16 of Walton's irrigation activities at that time; did
17 you not?

18 A We knew he was irrigating at that time, yes, sir.

19 Q And you were given full access to his properties and
20 knowledge about the nature and extent of his irrigating
21 practices; is that not correct?

22 A That is correct.

23 Q Do you know why the 40 acres at the Paschal Sherman
24 mission were not irrigated this past year?

25 A No, I do not.

1 Q And do you concur with, I believe with Mr. Gunn and
2 one other witness, that there was sufficient hay
3 obtained from (inaudible) property for the needs of
4 the mission this year in connection with their cattle.
5 THE REPORTER: Would you state it again,
6 I'm sorry.
7 MR. PRICE: I will withdraw the question.
8 Q Mr. Corke, were you responsible for the placement
9 of the southernmost irrigation well on the allotment
10 adjacent to the Walton property?
11 A I participated in the location, yes, sir.
12 Q And are you familiar with cones of depression?
13 A Yes, sir.
14 Q And do cones of depression, are they such that they,
15 one well influences another if they are located in
16 close proximity to one another?
17 A That is possible, yes.
18 Q And was that factor taken into consideration when
19 the decision was made to locate the southernmost
20 irrigation well closest to the boundary line with
21 Walton's property?
22 A At that point in time that was the first well that
23 was drilled, we were locating the first well near
24 the south boundary of the property to commence the
25 data collection, exploratory program going on upstream

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from that point.

Q Mr. Corke, following the findings in the 1977 irrigation season, what the Tribe found and the U.S.G.S. found and everybody else found was that the Tribe, due to their pumping of either Colville -- of their wells north of Walton, through their cone of depression actually reversed the flow of water from its normal north to south, down the valley and back up toward the Indian land; is that not correct?

A Yes.

Q In fact, water was being withdrawn from underneath of Walton's property, under the Indian allotment that they had leased.

A To a limited extent, yes.

MR. PRICE: I have no other questions.
Thank you, Mr. Corke.

Thank you, Your Honor.

THE COURT: I am going to ask counsel, can you finish cross-examination in the next 15 minutes or shall we -- do you have extensive cross-examination?

MISS ECKERT: Your Honor, I anticipate probably an hour of cross-examination. I believe, though, Mr. Mack has just a procedural matter which could be taken care of right now.

MR. MACK: Your Honor, I made a motion when

1 Mr. Tonasket was on the stand to strike his testimony
2 given in response to Mr. Veeder's question with regard
3 to the appraised value of the hay crop based, as it
4 was, as he testified, on information given him by
5 two individuals, one of whom he could remember and I
6 had a motion to strike based on hearsay, and forgot
7 to get a ruling from the Court on that, and I just
8 raise it again now if the Court wants to rule on that
9 now or leave it for sometime later.

10 MR. VEEDER: May I suggest when Mr. Tonasket
11 is back in the courtroom. I released him, as you
12 recall, Your Honor.

13 THE COURT: Yes, he will be back tomorrow.
14 Is somebody else going to call him?

15 MR. PRICE: He will not be back until
16 Friday, Your Honor. He will be in Yakima tomorrow.

17 THE COURT: Well, his testimony was hearsay.
18 I will grant the motion.

19 MR. MACK: Thank you, Your Honor.

20 THE COURT: And we will leave the rest of
21 the cross-examination for tomorrow morning. Court
22 will be in recess until 9:00 a.m.

23 THE CLERK OF THE COURT: All rise. The
24 Court is now recessed until 9:00.

25 (The Court is recessed until
9:00 a.m., February 9, 1978.)